

Proceeding of the European
General Court Martial.

1830



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PART I,
Containing
The Preliminaries of the Trial,
The OPENING ADDRESS of the D. J. & G.
and
The whole of the *EVIDENCE* for the *PROSECUTION*, as also for the *DEFENCE*.

Preface.

The printing of this Trial was first commenced in the well grounded hope and expectation, that my Innocence of the heinous crime laid to my charge would be made completely manifest by an Honorable Acquittal; and that the perusal of it would afford unqualified gratification to my friends and the Public in general; but grievously delusive have those expectations since proved! and I am now constrained to put it forth in vindication of my character, from the almost irreparable injury this has sustained by the Sentence and Remarks of the Court, and the sentiments of the Earl of Dalhousie, (as Commander in Chief) promulgated in General Orders; and I humbly trust that, whilst these Pages are perused with indulgence to my errors, in consideration of the trying circumstances in which it has been my unhappy lot to be situated, and of the unparalleled wrongs that have been heaped upon me; I shall receive from a generous minded and discerning Public, a more equitable Verdict, and a less unfavorable opinion.

With regard to my pleas to the Indictment, the Jurisdiction of the Court, and several other fair and legal objections which prove powerfully beneficial to every Prisoner under trial, in a British Court of Justice---all, more or less as regarded in my case, as appears by the Record; the inflammatory and slanderous Opening address of the Deputy Judge Advocate; the acrimony with which the whole of the Prosecution was conducted; the wretchedly contradictory testimony of acceptly perjured Witnesses, on which I have been convicted of a revolting and unheard crime, and doomed to an ignominious Death, or to a wretched state of existence worse than Death itself; the corrupt Summing up of that evidence by the Deputy Judge Advocate; and the indifference, with which, my repeated appeals to the interposition of Superior Authority for redress and protection, on these and other grounds of complaint, have apparently been met; there is no occasion for a lengthened or studied commentary here, as the feeling towards me in these several instances which the record displays, cannot fail to attract the attention of every sensible, and unprejudiced person; while their merits remain to be duly appreciated and pronounced on before a Superior Tribunal.

The Reader will, it is hoped, overlook such errors in Orthography, et cetera, as have occurred in the hurry of correcting the Press; being forced to quit Calcutta by the peremptory Orders of the Commander in Chief ere I could bring this Publication to the conclusion I had intended, time does not admit of my arranging an Errata; and I must also necessarily forego publishing other essential matter, which I was desirous to have done in order to render the work complete.

W. P. Cortley.

PROCEEDINGS of a European General Court Martial assembled at CAWN-
 PORE, on Thursday the 19th day of November, in the year of our LORD one thou-
 sand eight Hundred and Twenty-nine, by Order of Major General Sir S. Whit-
 tingham, K. C. B. K. C. H., &c. &c. &c. Commanding the Cawnpore Division of
 the Army, bearing date the 17th of November, 1829, [thereunto authorized by a
 Warrant by His Excellency General the Right Hon'ble Lord Combermere, G. O.
 B. G. C. H. and G. C. T. S. &c. &c. &c. Commander-in-Chief of all the Forces
 in India, bearing date the 7th of May, one thousand eight Hundred and Twenty-
 seven] and in obedience to General Orders by the Commander-in-Chief, dated the
 27th August last, for the Trial of Lieutenant W. Y. Torckler of the 4th Regiment
 Native Infantry.

CAWNPORE; THURSDAY, the 19th November, 1829.

PRESENT.

PRESIDENT.

Colonel M. CHILDERS, C. B. His Majesty's 11th Dragoons.

MEMBERS.



Lieutenant Colonel Robertson,	33d Native Infantry.
Lieutenant Colonel Comyn,	24th Native Infantry.
Captain Halfhide,	44th His Majesty's.
Captain Newton,	44th Native Infantry.
Captain D. Young,	44th His Majesty's.
Captain H. Bond,	11th Dragoons H. M.
Captain Delafosse,	Foot Artillery.
Captain Wake,	44th Native Infantry.
Captain Savary,	24th Native Infantry.
Captain Wootton,	44th His Majesty's.
Lieutenant Vernon,	33d Native Infantry.
Lieutenant Turnbull,	24th Native Infantry.
Lieutenant Lawrell,	3d Light Cavalry.
Lieutenant Maynard,	24th Native Infantry.
Lieutenant Lawrie,	11th Dragoons H. M.
Lieutenant Wemyss,	44th Native Infantry.

Conducting the Proceedings, Lieutenant W. Palmer, Deputy Judge Ad-
 vocate General. The Court assembles at 10 o'Clock A. M. at the quarters of the
 Deputy Judge Advocate General.

Lieutenant W. Y. Torckler, of the 4th Regiment Native Infantry, is
 brought Prisoner before the Court, and called to the Bar by Name.

General Orders, 27th August 1829, are now read---Division Orders under
 date the 17th of November, directing the assembly of the Court for the trial of
 Lieutenant W. Y. Torckler, of the 4th Regiment Native Infantry, are now read---

Division Orders, 17th November, reappointing Lieutenant Colonel Ro-
 bertson, 33d Native Infantry, and Captain Newton, 44th Native Infantry, Mem-
 bers of the Court, are now read---

Division Orders, 18th November 1829, directing His Majesty's 44th Foot to give two Captains as Members, in the room of Captains Armstrong and O'Neill, reported sick are now read---

Captain Halfhide and Brevet Captain Wootton, His Majesty's 44th Foot, take their seats.

A Warrant under the hand and Seal of His Excellency General the Right Hon'ble Lord Combermere, G. C. B. Commander-in-Chief of all the Forces in India, addressed to Major General Sir S. Whittingham, Kt. K. C. B. or Officer Commanding the Cawnpore Division of the Army, dated 7th of May, 1827, is now read---

A Warrant under the hand and Seal of Major General Sir S. Whittingham, Kt. K. C. B. Commanding the Cawnpore Division of the Army, addressed to Colonel Childers, C. B. His Majesty's 11th Dragoons, dated the 20th July, authorizing him to be President of the General Court Martial is now read---

A Warrant under the hand and Seal of His Excellency General the Right Hon'ble Viscount Combermere, G. C. B. &c. Commander-in-Chief of all the Forces in India, under date the 12th of January 1828, addressed to Lieutenant W. Palmer, appointing him to officiate as Deputy Judge Advocate General, to His Majesty's and the Hon'ble East India Company's Forces stationed within the limits of the Bengal Presidency is now read---

Deputy Judge Advocate General to the Prisoner. Lieutenant Torckler I am about to read over to you the Names of the Officers appointed for your Trial. If you have any objection to make to the President, or any of the Members, you are at liberty to do so, stating your reasons; stop me as I mention that person's Name.

The Names of the President and Members are now read over---

Deputy Judge Advocate General To the Prisoner; Have you any objection?

*Answer---*To none.

The President is sworn according to the Mutiny Act for the Hon'ble Company's Forces.

The Members are sworn according to the Mutiny Act for the Hon'ble Company's Army, after which the President administers to the Deputy Judge Advocate General the usual Oath.

The Deputy Judge Advocate General at the request of the Prisoner reads the following address.

Lieutenant Torckler requests, that the Court will be so kind as to allow him the assistance of a friend during the trial, and begs to say, that if the permission be granted, Captain McNaghten will render him the necessary aid.

He would also esteem it as a great favour if the Court would permit the same friend to assist in reading such addresses as, from time to time, it may be necessary for Lieutenant Torckler to make. He believes there is no law against this, and instances are not wanting of portions of an address being read by a Prisoner, and the remainder by the friends who were allowed to counsel him. The present defendant has never been accustomed to make any public addresses, and he much fears that this want of practice, and a natural agitation, will tend to hurt his cause by rendering what he may urge, if he have to read it himself, by no means sufficiently intelligible to the court ; while, on the other hand, the individual who is previously fully acquainted with the nature and scope of the arguments, will probably be able to deliver them more distinctly. If the decision rest merely on a point of form, and not of actual law, the defendant respectfully trusts that the court will indulgently waive the point in his favor.

The charge against the prisoner is read and entered as follows :

Lieutenant W. Y. Torckler of the 4th Regt. of Native Infantry, placed in arrest on the following charge.

Having at Sultanpore in the dominions of the King of Oude on the 9th of Aug., 1829 unlawfully, maliciously, and feloniously fired a loaded Pistol or two loaded Pistols at Lieutenant Philip Goldney of the same Regiment with intent to murder the said Lieutenant Goldney.

By order of His Excellency the Right Hon'ble the Commander in Chief.

(Signed) W. S. BEATSON;

Dep. Adj. Genl. of the Army.

QUESTION BY DEPUTY JUDGE ADVOCATE GENERAL.

How say you Lieutenant Torckler ! are you guilty or not guilty of the Charge preferred against you ?

Lieutenant Torckler's friend, read the following address,—

MR. PRESIDENT AND GENTLEMEN of this Honorable Court.

The indictment which I have just heard read, and to which I have been called upon to plead, with my life upon the issue, is not the same as a document with which I was furnished by the Deputy Judge Advocate (my prosecutor) and which purported to be a true copy of the charge against me. It is not only not the same as that alleged true copy, but the difference between the two is material, and of this I think I have a right to complain as a great neglect, though I am far from pretending to look upon it as a wilful deception. When the Court shall consider (and it is fitting it should know) that an indictment essentially varying from both the original and the copy now alluded to, was for many weeks held over my head, and my defensive efforts directed towards repelling it ; that it was at last, altered so as to make it still stricter, and of more fatal efficacy ; and that the document I now possess is one which the signed pledge of the Judge Advocate has officially authenticated, differing though it does from the real accusation, now suddenly published that issue may be joined upon it ;

when the Court, I say, shall consider these circumstances, and that it is a case of life and death upon which they have transpired, I am sure it *would* excuse me if I expressed indignation ; I am sure it *will* excuse me if I utter deep regret.

I could have had no just suspicion of such an error as this ; for I should on'y have been offering the Judge Advocate a gratuitous affront, if I had requested to have been favoured with a sight of the original charge to compare with it the copy that he had assured me was, emphatically, a true one ; and as the whole declaration did not occupy more than half a dozen lines, it would have been unreasonable in me to have required a better test of its authenticity, than the official signature of the proper officer. The variation of an unimportant word I should not have regarded, though even *it* would have been reprehensible ; but that now adverted to is of so material a nature, that had I been involved in any of the intricacies by which the most innocent man is liable to be perplexed, when he rests, as I must, for exculpation on the words of witnesses biassed against him, I might by its aid have escaped from the difficulty. Gentlemen, in my copy of the charge for an asserted felony, the word loaded, as referring to the allegation of the *two* Pistols, is no where to be found ; and had it not existed in the original any more than in what has been called the true copy (and the extreme badness of the old charge prevented me from being surprised at such an error in the new) I should in all probability have rendered the principal witness against me altogether incredible. If I should be answered that in the strictness of the civil law I was not entitled to any copy of the indictment, my rejoinder is that I had a strong claim to it from the immemorial custom of war in the like cases, and that the best writers have laid it down that although a charge may be altered any time before the trial, the Prisoner should be made acquainted with the whole amendment ; and at any rate, it must be clear to every one that if I got official information of the indictment at all, it should be of such an accurate nature, as not to take off my attention from a principal point, by directing it to a merely imaginary weak one. I thought it incumbent upon me to make these observations ; but I am fortunately so strong in conscious innocence, and so impressed with a belief that the charge is even in what is now its best state, so radically defective, that no manner of conviction can take place concerning me, that I have not any objection whatever to proceed in the matter without farther preparation. I shall, therefore, with the Court's permission, offer two pleas before I put myself (if indeed I must eventually put myself) on my lawful trial by pleading the general issue. The first is to the jurisdiction, and the second in abatement, with a view to quashing the whole indictment, and I trust I have the Court's permission to put them in accordingly.

Deputy Judge Advocate General. It is the order of the Court that no Witnesses on either side remain in Court.

The Prisoner here requests the Court's permission to offer some objection to the indictment or charge preferred against him.

The Court grants the request.

Prisoner. Having received your kind permission, Mr. President and Gentlemen, to offer the objections which I have recently named, I respectfully crave the necessary portion of your patience and your time, while I do what lies in my power to make apparent that we have not accurately ascertained what statute I am arraigned

ed on and consequently that the jurisdiction of this Court has not hitherto been established. I have been officially, and in writing, informed by the Deputy Judge Advocate that my indictment is based upon the following two paragraphs of the 9th Geo. IV. c. 74.

58th Section. " And be it enacted, that if any person unlawfully, and maliciously shall administer or attempt to administer to any person, or shall cause to be taken by any person any poison or other destructive thing, or shall unlawfully and maliciously attempt to drown, suffocate or strangle any person, or shall unlawfully and maliciously shoot at any person, or shall by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall unlawfully and maliciously stab, cut or wound any person, with intent, in any of the cases aforesaid, to murder such person, every such offender shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon."

59th Section. " And be it enacted, that, if any person unlawfully and maliciously shall shoot at any person, or shall by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person, or shall unlawfully, and maliciously stab, cut or wound any person with intent, in any of the cases aforesaid to maim, disfigure or disable such person or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of the party so offending, or of any of his accomplices, for any offence for which he or they may respectively be liable by law to be apprehended or detained every such offender, shall be guilty of felony, and being convicted thereof, shall suffer death as a felon: Provided always, that in case it shall appear on the trial of any person indicted for any of the offences above specified, that such acts of shooting, or of attempting to discharge loaded arms, or of stabbing, cutting or wounding as aforesaid, were committed under such circumstances, that if death had ensued therefrom the same would not in law have amounted to the crime of murder, in every such case, the person so indicted shall be acquitted of felony."

If it really be the case, that the charge is founded upon the foregoing clauses, I have been advised to urge it as a point of great doubt, whether the second Section of the 4th Geo. IV. c. 81, can be so construed as to give a Court Martial a right to take cognizance of the offence, and the following are the principal grounds for the dubiety.

The words of the Section in question (that is as many of them as are in point at present) are these viz : that Court's Martial are to be held, at places situated above a hundred and twenty miles from the specified Presidencies, " for the trial of any person under his (the commanding Officer's) command, accused of having committed wilful murder, theft, robbery, rape, or any other crime, which is capital by the laws of England." Now, it is a rule of law, never to be violated, that all penal Statutes must be construed strictly, and that no interpretation must be put upon their words, but what they will fairly, manifestly, and grammatically bear. Therefore the verb " is " in the above quotation, being in the present tense, cannot possibly be so construed as to include the future, any more than the past ; for if it could be taken to imply will, or shall, it could also

be taken to imply, was, or has been, and thus include laws which were pre-existent to the then enactment, whether they were otherwise in force or not. Its meaning must be limited to the present time, with reference to the date of the Act; and accordingly only such crimes as were capital by the laws of England in the 4th Year of His present Majesty's Reign, and none made capital since, are triable by a Court Martial in virtue of that Act. Such crimes, I mean, as were then capital, if committed in India; for it has never been pretended that a Court Martial could, in virtue of Sec. 2, 4th Geo. IV. 81, condemn a native of India to be, for example, executed for forgery; because the law of England in that respect had not, when the Act was passed, been extended to such a description of offender; and the Article of War referring to the above named section, provides for all sentences passed under it, being in conformity with the Common and Statute law of England,---which no Sentence would be that awarded death for an offence done in India, to which the said Statute law had not yet extended that ultimate penalty; and the same may be said of all other offences made, or to be made, capital by subsequent enactments. Now, it is evident that if the crime laid against me has only been made a statutable offence by the 9th Geo. IV. c. 74, it cannot be brought under the cognizance given to military tribunals in virtue of an act of Parliament by five years its precursor; unless the latter were so altered as to make it correspond with the one which constituted the new offence. Had the Mutiny Act said, "which is, or hereafter may be, capital by the laws of England," the case had been altered, and the jurisdiction undeniable; but by the only interpretation that can be given to penal words, that is, their strict & obvious meaning, you have no authority to sit in judgment upon even the best indictment that a lawyer could frame (and, legally speaking, this is one of the worst) on the act I have been referred to, as the one upon which I was here to be arraigned.

If, then, the deed charge against me, in the incongruous manner I shall presently point out, be one that the 9th Geo. IV. has created a felony in India, I cannot be called upon to plead to it here; but if it be pronounced to have been a felony in the 4th year of our Sovereign's Reign, then it could only have been made so by the 43d Geo. III. c. 58, which never extended to India till it was included in the 9th Geo. IV. c. 74, and consequently could not have been embraced by the above cited Mutiny Act, which applied distinctly to India, while the 43d Geo. III. did not extend beyond England and Ireland. On the 9th Geo. I. c. 22, the Charge against me cannot have been founded; because the felony in my case, agreeably to the terms of the Charge, depends entirely on the intent to murder; and if that intent be not proved, exactly as it is laid, I cannot be found guilty upon this indictment; for not only will an indictment founded on the Act that created the offence be bad (1. Ch. C. L. 241.) if it omit the descriptive terms employed by the Act; but the intent must be averred and proved as laid (245) or it will be fatal. But the Act last cited, and which is commonly called the Black Act, says nothing whatever regarding the intent, but makes it felony only to shoot at any person; and I may give you as an instance of how scrupulously the legislature requires its own words, and their natural meaning, to be always adhered to; that where the gun discharged was proved not to have been levelled at the party complaining, in consequence of his having been a few yards off, through owing to

darkness the accused thought he was on the spot aimed at, no conviction could be had under that Statute.

In my case the intent forms the gist of the indictment; and if it cannot be proved that I had an intent to murder (supposing the indictment to be ever so well drawn up) your oath would not allow you to convict me, even if it were shewn that my intention was to maim.

But although the Judge Advocate has informed me that both the 59th and 60th Sections* of the 9th Geo. IV. c. 74, have reference to my alleged crime, I beg, with deference, to submit that this is a mistake; for it is the 59th alone that can uphold the indictment; as my intent is laid as having been to murder, and the 60th Section provides (agreeably to the copy of it with which the Judge Advocate was so good as to furnish me) for nothing beyond an intent "to maim, disfigure, or disable, or to do some other grievous bodily harm," to the party assaulted. The 59th Section, therefore is the only one in the whole of that Act which can sustain this charge; and as it is not a transcript of the Black Act, nor yet of Lord Ellenborough's Act, but only an amalgamation of certain portions of each (one of them not, therefore, extending to India) I leave it to the Court to decide whether it is not a new Act, creating a crime which, before it was framed, was not capital in India, and consequently whether a previous Act, like the 4th Geo. IV. c. 81, can reasonably be said to embrace its provisions, or to derive therefrom a greater power than it originally possessed. As I do not believe the foregoing question, vitally important though it doubtless be, has ever chanced to have been mooted before, it will be but a weak argument against me to urge that Courts Martial have already tried offences under the recent Statute; for the point most likely never occurred to their minds, and if wrong have been done to my predecessors in misfortune, the stronger is the reason for its being avoided now, and the greater the credit and the blessing to that tribunal which shall first stay the injustice, and place a bar to its recurrence for the time to come. If this Court have not, as I think it has not, jurisdiction in the matter, it is clear that the case will be cognizable by the Supreme Court of Judicature of Fort William; and if I desire, as I very anxiously do, to have it heard before that tribunal, I beseech of you, Mr. President and Gentlemen, not to imagine, for a single instant, that the desire proceeds from the least apprehension I feel that you would not do me the fullest justice; for, believe me, it is not so. The wish I have expressed arises from a supposition that the practice of that Court will give a greater latitude to the investigation than you can accord to it; that every point connected with the intercourse between Lieutenant Goldney and myself will be there more thoroughly, and to me therefore, more satisfactorily, sifted than it can be here; and finally that my cross-examination, in particular, will be more fully and successfully conducted in such an event, and the whole truth more likely to be elicited, than either my friends or myself can hope will be the case, from our own weak and less practised endeavours on the present occasion.

In conclusion, Gentlemen, I have only to ask for, what I am sure I shall receive, your mature consideration of the points herein disclosed to you, concerning the proper jurisdiction of the Court; in respect to which, it is clearly laid

* In a former page they are referred to as the 58th and 59th Sections, but as that is an error in the numbering, it is hereby corrected accordingly; -- the preamble of the Act being now counted as the first section.

down (1 Hawk, P. C. c. 23, Sec. 4, and 1 Hale P. C. 497,) that if judgment of death be given by a Judge not authorized by lawful commission, and execution done accordingly, the Judge and executioners are guilty of murder; and I am confident that it would weigh as heavily upon each of your consciences to only risk a man's life, without full and undoubted authority to do so, as it would be repulsive to your feelings of honor and integrity to do the slightest act that might endanger the purity of your established character.

The Deputy Judge Advocate General, in reply to the above objection to the jurisdiction of the Court, reads the following passage from a letter No. 1942, dated Judge Advocate General's Office, Presidency of Fort William 29th May, 1829, being part of a reply to a letter from the Deputy Judge Advocate General, Lieutenant Palmer, dated the 16th May, 1829, referring the point now mooted, to the consideration of the Judge Advocate General.

" 2d. The second Paragraph of it expresses a doubt of the jurisdiction of Courts Martial on offences provided for in the new Act for the better administration of Justice in India. If your supposition were correct, a Court Martial would be deprived of all jurisdiction whatever in criminal offences not Military, for the Statutes to which you would confine it no longer exist, and you would equally annihilate the Supreme Court which was constituted like Courts Martial, at a particular date, to administer the law then obtaining. The very first Section however is direct in its expression, and dissipates every doubt. " This Act shall take effect---and shall extend to all persons and places---over whom or which the jurisdiction of any of His Majesty's Courts of Justice erected, does extend.

The Deputy Judge Advocate General now reads the Preamble to the 9th Geo. 4th C. 74, and the last Section of that Statute---

" Whereas many wholesome alterations have lately been made in the Criminal Laws of England, and the administration thereof, by authority of Parliament, and it is expedient that some of the said alterations should be extended to the British territories under the Government of the United Company of Merchants of England trading to the East Indies. Be it therefore enacted, by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall commence and take effect on and from the first day of March, 1829, and shall extend to all persons and all places, as well on Land as on the high seas, over whom or which the jurisdiction of any of His Majesty's Courts of Justice erected or to be erected within the British territories under the Government of the United Company of Merchants of England trading to the East Indies does or shall hereafter extend."

" And be it enacted, that all persons, whether British subjects or others employed by or in the Service of His Majesty; shall be held subject and amenable to the criminal Jurisdiction of His Majesty's Courts of Justice, erected or to be erected within the British Territories under the Government of the said India Company, for all crimes and offences to be by them committed on or from and after the first day of March 1829, in the same manner as persons employed by or in the service of the said Hon'ble Company are now by law subject and amenable to the said Jurisdiction."

In reply to the objection, made with regard to the omission in the copy of the Charge furnished to the Prisoner, the Deputy Judge Advocate General reads the following passage from "Adye's Treatise on Courts Martial, page 123 3d edition.

"Although it is usual to let the Prisoner have an exact Copy of the crime or crimes laid to his charge, yet upon the trial of Lieutenant-General (then Major-General) Monkton, for the charge preferred against him by Major Campbell, (of which he was most honourably acquitted) the General, upon hearing the crimes that were exhibited against him, in the King's Warrant, observed to the Court, that the Copy of the charge, which had been given him before, and against which he had prepared his defence, was different from that now read; but the Court gave it as their opinion that the complainant be at liberty to prosecute the charge as stated in His Majesty's warrant to which Major-General Monkton must necessarily answer, and that, if in the course of his defence, it should be material for him to shew, either that there was any substantial variation between the present charge, and that originally exhibited, or that the latter indicated any greater degree of malevolence or for any other purpose, conducive to his defence, it might than be proper to lay the first Charge, with his answer to it before the Court."

Also the following passage from, "Kennedy's Practical Remarks on Proceedings of General Courts Martial page 27."

"But the not furnishing a Prisoner with a Copy of the charge, or any difference which may exist between the charge on which he is arraigned and the Copy furnished him, cannot be pleaded by him in bar of Trial. This circumstance can be only urged by the Prisoner as sufficient grounds for requesting from the Court a longer time for the preparation of his defence."

The Prisoner's friend addresses the Court as follows :

The court will not fail to observe that the part of the Judge Advocate General's letter just read, does not refer to the present objection by any means so positively as the Deputy Judge Advocate appears to think; for not only does it not meet the point as to the power given by the Mutiny Act to future crimes; but it seems wrong in saying that had the objection it alluded to been well founded, it would have annihilated not only the authority of Courts Martial but that of the Supreme Court of Judicature also. This would not be the case, for the constitution of the Supreme Court is such that it makes it embrace all law, no matter when made; for this plain reason, that it is a permanent Court, which no Military one is. For instance, even the Supreme Court could not try for any offence, not extended to India, such as Lord Ellenborough's Act heretofore; and at any rate the Court, I repeat, must at once perceive that the very Act giving it jurisdiction, has not in this case prospective effect.

The Court is cleared and closed.

The Court overrules both objections.

The Court is opened and the decision read.

The Deputy Judge Advocate General calls on the Prisoner to plead.

The Prisoner addresses the Court through his friend as follows :

MR. PRESIDENT AND GENTLEMEN.

Before placing myself regularly on my trial by this Court, which I beg to say I sincerely believe to be a most honorable tribunal, by putting in the plea of the general issue, I have great and various objections (as I have already intimated) to make to the indictment, whereby to show that it should not be proceeded in, but be forthwith quashed on account of its invalidity. In the course of the following argument the Judge Advocate will perceive ample reasons for my not having said any thing, heretofore, on the subject of my suspicions that this Charge was inaccurately copied; for besides that the suspicions themselves were not particularly violent, I dreaded to attract, by any enquiry, his critical attention to the terms of the indictment, lest he might have discovered, and put off the trial to amend, the other manifold defects which the document contains. It had not been for my own interest (which I am bound to think of first) to have drawn his previous notice to the charge, even with reference to only the omitted word, which he would most likely have then got inserted in its proper place, and thus have remedied the flaw; and at any rate the correctness of my own part of the case is what I have chiefly to do with. It was not, however, as I beg distinctly may be understood by all, the least want of courtesy that, in the present instance, withheld communication, and in the assurance that this fact will be readily believed, I shall proceed with my argument against the indictment.

In all cases of felony, which are investigated by the permanent Courts of Justice of our land, a variety of pleas, under several denominations, are permitted to be made, but without concluding the Prisoner, previously to his putting himself on his Country by the general plea; but it is not often that an accused party avails himself of these privileges, particularly of demurrers, and pleas in abatement, at the outset of the Proceedings, because he has future opportunities of rendering their subject matter beneficial to his cause, which are not possessed by the Defendant in a case that is investigated by a Military Court. The latter cannot offer any thing, for example, in arrest of Judgment, nor can he move for a new trial, on account of his being kept in ignorance of the verdict until it is ultimately confirmed; and there are other disadvantages under which he labors (besides the awful one of having no Counsel to argue points of law for him, in a *direct* address) which it were needless to enumerate in the presence of men who must already be aware of them. As, therefore, from the moment I plead the general issue, I shall lose opportunities of vanquishing those who are seeking for my life, which opportunities would not be in a like manner lost to an accused party in a Civil Court of Justice, I think it incumbent upon me to solicit your permission to offer, at this stage, all the principal objections I have to the trial's being carried any farther than it has already got; and if upon the full consideration which I am sure you will give the case, you should pronounce a decision unfavorable to my views, I shall in all the confidence of a demonstrable innocency, make way for the investigation in the usual mode. You will be better enabled to comprehend at once the drift and scope of my argument on the accusation, if I premise that the first copy I received of the indictment upon which I was destined to be arraigned, accused me of a murderous intention, in the following terms;---

“ For having at Sulfanpore, in the Nawatb Vizier's dominions, on the 9th of August, 1829, maliciously fired a loaded pistol, or two loaded pistols, at Lieut. Philip Goldney, of the same Regt. with intent to murder the said Lt. Goldney.”

The instant that the language of the Charge was looked at by those on whose advice, in my manifold difficulties, I relied, they informed me that a piece of blank paper had been just as efficacious; and that before no lawful Court whatever could I have been tried for a felony on so invalid a declaration. Its *venue* was laid in an impossible territory, a non-existent individual was named as the ruler of that territory; material deviations from the Statute were observable throughout; and the offence was not exhibited as a *felony* at all! For about the space of eight weeks that Charge was allowed to hang over me, and during the whole of that time my attention was mainly occupied in collecting such information as might enable me to demonstrate its legal absurdity to the Court. I could not have pre-supposed ignorance in the framers of the Charge, and still less a wilful desire to lead me from the true point whereon depended my safety, by drawing my self-preserved efforts to a distant mark, the removal of which, on the near approach of my trial, had been previously resolved on, so that I might be left in confusion and fatally unprepared. It not having been possible, I say, that I could for an instant have suspected such circumstances, I directed my defensive energies against the weaknesses of the indictment, and for almost two months I labored to expose them; when so late as the 6th day of the present month, I received from the Deputy Judge Advocate General, an official letter giving cover to an attested copy of an amended charge, and informing me that the old one was thereby nullified. Gentlemen, to one whose life was jeopardied, this was no trifling, nor indifferent, occurrence. It showed me much of my previous labor thrown away, and many new obstacles interposed to my acquittal; and, above all, it served to unsettle my mind, by depriving me of the certainty of feeling that no other new Charge would be brought forward on the subject, even perhaps the very hour before my arraignment. Well, then, the second accusation was worded as follows; and on that, it seems, I am at last to be called to plead.

“ Having at Sultanpore in the dominions of the King of Oude, on the 9th August, 1829, unlawfully, maliciously, and feloniously fired a loaded Pistol, or two loaded Pistols, at Lieutenant Phillip Goldney of the same Regiment, with intent to murder the said Lieutenant Goldney---”

Compared with the first document which I have specified, the foregoing indictment may certainly be said to be considerably amended; but when you reflect, Gentlemen, that its first exceeding vagueness attracted due attention, and that the consequence was a remodelling of its terms, I am sure you will be proposed to look upon the emendations as complete, and will be proportionally surprised to hear, and find it clearly shown, that they have rendered it scarcely one whit more valuable in the eye of the law than it was in the state which, by the pains taken to alter it, was acknowledged to have been so faulty. As I cannot expect you would look upon mine as a very infallible opinion, unless it were supported by that of others, sufficiently versed in the laws and institutions of our Country to make their dicta and reasoning command the concurrence of less practised individuals, I shall

as I go on, refer you to the various law authorities by whom my own judgment has been guided in my estimate of the Charge: so that you may have at least the same means that I have had of appreciating its worth, and deciding on the propriety of admitting it at all. In an indictment for felony, drawn up by a professional agent, and intended for submission to a Civil Court of Law, I do not mean to deny that much of form and technicality is included, which is not essential to the soundness of the Charge, though neither is it, at the same time, allowed to be omitted; and the insertion of which it is not usual to require in the body, or the preamble, of a similarly grounded document, which is destined to be scrutinized by a tribunal like this. But there are certain terms and forms that cannot be dispensed with; and as the cognizance of felonies, such as I am charged with, is a new power granted to Courts Martial; it must inevitably follow that such rules of procedure as the previous Military practice, and the customs of War, have not provided, because the necessity for them was not foreseen, must be adopted from the Civil Courts, for our general guidance in the enquiry into civil offences. All that the Civil Courts, therefore, deem essential to an indictment of a capital offence, should be provided in the Charge which you are called upon to try; and the deficiencies which would procure its being quashed before the former tribunal, must have an equally fatal tendency to neutralize it here. In this position I am fully borne out by Tytler, who is one of our most lucid and accurate Military Lawyers, and on a point where there is, indeed, no difference of opinion among the established authorities, one, who is the principal of them, is sufficient to quote. At page 209, that well known writer most justly observes that, "the Charge is, properly speaking, an indictment, and must in its substance possess all its essential requisites, though it is less fettered in the form;" and as he was referring to mere Military Charges, how much more strongly should the observation apply to an instance like the present, in which an individual, unskilled in legal disquisitions, and far from the reach of professional advice, is called to defend his life from the consequences of a civil accusation. It is, then, absolutely necessary that an indictment for this description of felony should have not only the word "feloniously" inserted, but also the words "wilfully" and "of malice aforethought;" and not only must these words be placed so as, in the first place, to describe the act alleged to have been done, but they should be repeated after the word intent, so as likewise to aver the criminal object of the said intent; or, if they be not repeated, nor the words "then and there" inserted in their room, the indictment for murder cannot be by any means sustained; for it will only amount to a Charge of manslaughter (1 Hale 187 III Chit, C. L. 751, notes o. s.) and in the work last cited page 737, it is laid down that "the offence must also be stated to have been committed with malice aforethought, which we have seen enter so materially into the definition of the offence, and which it is absolutely necessary to aver; nor do the words feloniously murder aid the omission." And again, if the words "then and there" be not placed before the intent, or the fact, the words feloniously and of malice aforethought must be repeated; and yet again (vol. I, P. 243, where vide note q for abundant authorities) as a conclusion from the facts averred, it must be stated that so the defendant feloniously, of his malice aforethought, did &c. for without the term "malice aforethought," the indictment will be taken to charge manslaughter only; and, because, without these words, "malice aforethought," the

indictment, though in other respects good, must be taken to charge manslaughter only; so it now involves the repugnancy of laying an intent to murder, where, at the most, only manslaughter can be found. Nor yet is it an indictment for manslaughter; for to be that, it should not only omit the words "of malice aforethought," but substitute those of kill, or slay, in the place of murder (Bla. Com. 307, and see also MacArthur vol. 2 p. 1 to 22 on the indictment generally) so that it is not, in point of legal fact, an indictment for any thing at all. For precedents of proper indictments on shooting, &c. see 11 Ch. C. L. 752, 753, where all indispensable terms may be observed. The rule of law which permits a verdict of manslaughter to result from a charge of murder, presumes that the charge shall be properly exhibited, and can therefore not apply to the present occasion.

Furthermore, the allegation of time and place, then and there, should be repeated to every material fact which is issuable and triable; and therefore if an indictment laid that the defendant at the venue, made an assault, and with his sword feloniously struck &c. without saying then and there feloniously struck &c. it will be insufficient (1 Ch. C. L. 198, 2 Hale 180.) In a case even of positive murder, it is not sufficient to allege that the defendant on a certain day made an assault, and struck the party killed (and if not sufficient in actual murder, *a fortiori* not so in the less important case of a mere intent) but the words then and there must be introduced, and the word *immediately* as a substitute, is too uncertain. Then and there, saves the repetition of feloniously and of malice aforethought, but one or other of them must be inserted, (1 Ch. C. L. 220.) It is held also that the indictment must pursue the very word of the Statute, for no others will be taken to do as well; and the offence must be charged to be wilfully and maliciously, as well as feloniously, committed; for where it was charged (as mine is) to have been done "unlawfully, maliciously, and feloniously" omitting the word "wilfully" the statement was held to be defective, (1 East P. C. 414, 11 Ch. C. L. 792 note.) Thus much, Mr. President and Gentlemen of this Hon'ble Court, in demonstration of the invalidity and worthlessness of the present indictment, with reference to only the omission of the above named words, for unless you resolve to decide the question in the very face of our sagest commentators, all agreeing with one another; and of their unanimous sentiments, hallowed as they are by all that can render human reasoning respectable, you must unavoidably throw out the present accusation, as one which the spirit of your oath forbids you to investigate; for you cannot do justice, as you have sworn to do, so long as your proceedings are based upon an illegal substructure. But these are not the only omissions, nor the only departures from the enacted law, which, brief as it is, this indictment, so fertile in illegalities, abundantly displays; for what yet remain to be demonstrated are so glaring and so frequent that even the due insertion of the foregoing essentials could not have saved it, while the forthcoming ones were disregarded by whoever drew it out. I have already shown to you that the words employed by the Statute which authorizes the indictment, must also be employed in the latter instrument itself. It is, says one of the before referred to authors, in every case advisable to attend with the greatest nicety to the words contained in the Act, for no others can be so proper to describe the crime; and the broad principle which renders a strict adherence essential, is supported by too strong a number of decisions to be shaken. By the 4th

Geo. II c. 26 and 6th Geo. II c. 14. all indictments must be in words at length, and therefore no abbreviations can be admitted: and again, no part of the indictment must be in figures; numbers, dates, &c. must be written at length. (Archbold's criminal pleas 15. 25; Chitty C. L. Hale, &c.) These particularities are founded on, and sanctioned by, very excellent reasoning; for were they not insisted on, a door would be opened to extreme irregularity in regard to indictments, and *in favorem vitæ* the law is most scrupulous. Now there are several portions of the charge before you in direct contrariety to the above humane, wise, and necessary provisions; for not only is my own name not given at length, but the number of my Regiment, and the date of the occurrence, as respects both the month and the year, are inserted in figures, and on this account alone, the crime would be held, in the Civil Courts, to be imperfectly specified as not conforming with the Statute. And be it ever remembered that Courts Martial, in the exercise of their extended jurisdiction, are bound to be guided by the Acts of Parliament relating to the case; as, in mere military investigations, by what is termed the Mutiny Act; else it would be in vain for the Articles of War to direct, as they do, that the Sentence awarded in civil cases should be in strict conformity with the Statute law of England, if that law were to be violated in the course of the proceedings on which the sentence must be formed. Furthermore it is laid down in all the Books, that the indictment must state the facts of the crime with as much certainty as the nature of the case will admit (1 Chitty C. L. 171) though I shall presently convince you it has not done so here; and it is also said, that an indictment ought to be certain to every intent, and without any intendment to the contrary, and ought to have the same certainty as a declaration; but the present one has not. And the charge must be sufficiently explicit to support itself, for no latitude of intencion can be allowed to include any thing more than is expressed; and every crime must appear on the face of the record with a scrupulous certainty; and every indictment must charge the crime with such scrupulous certainty that it may be understood by every one, alleging all the requisites that constitute the offence, which the charge now under notice is particularly far from doing, as shall by and by be shown.

The late Lord Ellenborough perspicuously observed that every indictment, or information, ought to contain a complete description of such facts and circumstances as constitute the crime without inconsistency and repugnancy; and no indictment can be held sufficient to warrant the punishment awarded by the statute, unless it describe the offence in the very words of the statute. I have already given you many authorities and references in support of the foregoing observations; and I am instructed that a search among the best Books upon criminal jurisprudence would enable me to weary you with the very enumeration of the writers who are on these points in my favor.

Now, then, to apply these observations to the deficient parts of the Charge, that have not yet been dwelt upon. I am accused of having fired a loaded Pistol; but in none of the three Acts which have a bearing on the case, is the word "fire" the one which is employed; ---the terms shoot and discharge being the only fit and proper ones, and the substitution of even a perfect synonyme

which however *fire* is not) will not be deemed sufficient. The Acts alluded to are the 9th Geo. I c. 22. of which the words are any person " who shall wilfully and maliciously *shoot* at any person ; and the 43d Geo. III c. 58 Sec. which enacts that " if any person or persons, shall wilfully, maliciously, or unlawfully *shoot* at any of his Majesty's subjects, &c. or attempt, by drawing a trigger, or in any other manner, to *discharge*" &c. and lastly the 9th Geo. IV c. 74. which likewise employs the words " shoot" and " discharge," to describe what in military language is termed the *firing* of any loaded weapon. The reason that the law of the land does not recognize the word *fire*, nor make use of it at all, is because it can, at the most, apply but to a gun or a pistol ; whereas the terms shoot and discharge are properly descriptive of all missiles, as an arrow from the bow, a stone from the sling, or, in a word, any missive weapon sent forth from any instrument ; and therefore their clearness and comprehensiveness have properly caused their selection, as descriptives, by the wisest legislators.

The same principle obtains with respect to our Mutiny Act, the precise words of which must, in like cases, be employed ; and in the 2d Section of which (the only one, I may observe, that gives you jurisdiction in civil cases) the word " wilful" is prefixed to murder, and thus creates the required correspondence between it and the civil Acts of Parliament which I have last cited ; and further proves the essentialness of the word wilfully being placed in the indictment, to make it triable at all. And the word " loaded" is not, *per se*, sufficient either to show a murderous intent, or a felonious action ; so that it makes the indictment appear repugnant and inconsistent, contrary to Lord Ellenborough's doctrine, by pronouncing that to be feloniously done, which, it may be, might be done a hundred times without being felonious. The manner in which the Pistol was loaded, is essential to be described, for if loaded with powder only, the discharging it was not felonious, and the intent of discharging it could not have been to murder ; and on the positive necessity of averring that the pistol was loaded with a leaden bullet, or slugs, or something else that is hurtful or dangerous, I refer you, among many others, to III Chitty C. L. 791, and indeed *passim*, where he writes on the general subject ; and *vide* the same, page 788 note *h*. for more authority for the indispensableness of using the words of the Statute ; and in support of other portions of the foregoing remarks, especially as to the words " then & there" read pages 789, 794, 828, 829 ; as I do not wish to lengthen this address by mere quotations ; and the Judge Advocate can, and no doubt will, point out to you, in various places in Blackstone's Commentaries, Phillipp's Law of Evidence, and Starkie's Reports, numerous and concurrent reasonings on, and instances of, the same important essentials. I shall, at the same time, beg of him to say whether he would, had it been left to him, have drawn up so deficient a Charge for submission to any Court ; and if not, to say why he would have been more particular, unless there was a legal necessity that he should be so. I request of him also to lay before the Court some indictments of his own on the 9th Geo. IV. c. 74, to see wherein they differ from, and improve upon, the present ; and likewise to adduce the late one for a murder at Meerut ; and then, Gentlemen, it will be for you to say if I alone am to have my life put to hazard upon a laxer accusation than what has been exhibited against other alleged offenders. Having thus endeavoured to show you the invalidity and

worthlessness of the Charge against me; not for want of mere superfluous technicalities, or averments, that you might look upon as nothing less than surplusage; but for want of such requisites as the positive laws, in virtue of which you sit here to try me, have declared to be essential to render an indictment triable by any Court of Justice; I have still a remark on this division of the argument, to add, which is, that although by the particular Act (that is the 9th Geo. IV. c. 74,) on which I am informed the indictment is founded, an indictment is saved from being thrown out as invalid on account of several errors, the avoidance of which was formerly deemed necessary to its legal completeness; yet none of the omissions which I have exposed are thereby rendered of less consequence than they were before; but only such inaccuracies as might relate to the venue, or the day of the month, or the month itself, or the use of a singular for a plural noun, in an immaterial word, and the like; so that in regard to all my objections, the Statute just named does neither abrogate nor alter the law of indictments; and you are bound, Gentlemen, to rely on the authorities I have given you, in the total absence of equally weighty ones, or, indeed, I may almost say of any, to oppose them. The analogy holds in regard to an indictment for a Military offence, in virtue of either of the existing Mutiny Acts; for if an Officer motioned to draw his sword against a superior, being in the execution of his office, not only must that "execution of office" be averred, in the very words of the Act, but the defendant must be charged explicitly with having attempted to draw, and neither the words pull out, nor the word unsheath, could be taken to be sufficient; any more than the phrase "performance of his duty" would be deemed a proper substitute for "execution of his office." And if this be true in a case that did not affect the honor and integrity of the accused, but only placed his Commission in jeopardy; how much more necessary and incontrovertible must it be, in an instance when the averment goes to endanger life, and to ruin reputation.

D. J. A. The term *wilfully* is not requisite; because it is not to be found in the Statute. I also remember a case of an indictment having described a pistol as having been loaded with wadding, and it was held sufficient.

Prisoner. The Judge Advocate remarked that the word *wilfully* is not essential, because it is not mentioned in the Statute on which he asserts the indictment is based; but that argument would equally render useless the words felonious and malice aforethought, even in indictments on the Black Act or Lord Ellenborough's Act, for those words are not mentioned in those Statutes. The fact is that they are all three laid down as essential, in the Statutes on indictments (already cited) and as the most recent Statutes do not abrogate them, they are still in force.

The case of the wadding was only ruled good, because, I believe, the person fired at was near enough to his assailant to render wadding hurtful. On the Judge Advocate's own argument the word "fire" is fatal.

The Court is cleared.

The Court over-rules the objection.

The Court is opened and the decision read---

The Prisoner now pleads, Not Guilty.

THE DEPUTY JUDGE ADVOCATE GENERAL *Addresses the Court as follows. :--*

MR. PRESIDENT AND GENTLEMEN of this Honorable Court.

Whether you consider the rank in Society of the Prisoner now before you, or the magnitude and atrocity of the crime imputed to him, or reflect on the awful nature of the penalty assigned by Law to that deed which this charge asserts him to have perpetrated feloniously and maliciously, it will be obvious that this is a case which demands the most patient, scrutinizing, and anxious attention.

I will not harass the feelings of the Prisoner on the Court, nor will I distress myself, by dwelling for an instant on the enormity of this imputed offence, nor is it necessary that I should do so, & I will therefore proceed to submit to your consideration such observations as I deem absolutely requisite to a thorough understanding of the real merits of the question at issue; and it appears to me that I shall best attain that most desirable object, by offering my remarks on *the Law* applicable to the case in the *first* place, in order that it may then, from the statement of the facts (as they will be proved by evidence) be inferred and determined whether or no, *malice*, the gist and essence of the crime actuated the Prisoner. Without *malice*, the charge cannot stand, and it will be my painful duty to establish the existence of *malice*, beyond the possibility of all rational doubt, and to prove that the Prisoner committed the crime here laid to his charge, from feelings of deep and deadly enmity, hatred, and revenge, towards Lieutenant Goldney.

Before I proceed farther, pardon, Gentlemen, the liberty I take in imploring you to banish from your recollections every rumour or even whisper you may have heard, either favourable or disadvantageous to the Prisoner at your bar---let me beseech you, in a case of this vital importance to him, to eradicate from your memories, every idle tale or improvident report which has been spread on this subject, for rumours and statements I know have been abroad, and some parts which I have understood to be stated as *facts*, have been no less astonishing and improper, than cruel, ungenerous, and untrue, both to Lieutenant Torekler & to Lieut. Goldney. If, however, there were any possibility of congratulating Lieut. Torekler in his present situation, it is on the confidence he may repose in you his Brother Officers, Members of this Court, and on the solid assurance he may rely on that rumours and reports will make no impression on you his Judges.

The charge before the Court, imputes to the Prisoner, the having, on the 9th of August last, unlawfully, feloniously, and maliciously, fired a loaded Pistol or two loaded Pistols, at Lieutenant Phillip Goldney of the same Regiment, with intent to murder the said Lieutenant Goldney.

The charge is founded on the provisions of a Bill which came into operation on the 2nd of March last, and which is entitled an act for *improving* the administration of Criminal Justice in the East Indies. The first of the sections on which this charge is principally built is as follows :

And be it enacted, that if any person unlawfully and maliciously shall

Such, Gentlemen, appears to be sufficient for the present, as connected with the crime of Murder, the difference between which and manslaughter consists in this---that manslaughter, when voluntary, arises from the sudden heat of the passions-----Murder from the deliberate wickedness of the heart.

It does not, however, appear to me that this act of the Prisoner's can by any possibility, or by any ingenuity, be brought under the head of manslaughter, nor indeed under any other than of murder, wilful deliberate and ; malicious and I shall not therefore trespass on your time and attention, at this stage of the Proceedings, by anticipating what line of defence it is intended to set up. It is sufficient for me now to say that, " *any unlawful act, deliberately committed, tending to the personal hurt of any one immediately, or by way of necessary consequence, in which death ensues, is Murder; any unlawful act without an ill intent, is manslaughter; with an ill intent, Murder.*" wood's Ins 348 The law however presumes every homicide to be malicious; and consequently that every attempt to commit a homicide is perpetrated with an ill intent, i. e. *with an intent to Murder, provided that attempt be clearly and distinctly proved.*

"It is a general rule," says Mr. Justice Blackstone "that all homicide is malicious, and of course amounts to murder, unless when justified by the command or permission of the Law---excused on the account of accident or self preservation; or alleviated into manslaughter, by being either the involuntary consequence of some act, not strictly lawful, or (if voluntary) occasioned by some sudden and sufficiently violent provocation. And all these circumstances of justification, excuse, or alleviation, it is incumbent upon the Prisoner to make out, to the satisfaction of the Court and Jury, the latter of whom are to decide whether the circumstances alleged are proved to have actually existed; the former, how far they extend to take away or mitigate the guilt. For all homicide is presumed to be malicious, until the contrary appeareth upon evidence,"---4 Blac. Com. 201.

With the permission of the Court, I will now proceed to give as brief and plain a detail of the circumstances which have led to this unfortunate termination, as I can---and when I shall have concluded, it will be matter of astonishment to the Court to find so awful a result of a trivial dispute.

It appears from the papers before me, that in the month of May 1828, Lieutenant Torekler, the Prisoner, was Quarter Master of his Regiment, and Lt. Goldney, his Junior Officer, Commanded the Light Company of the Regiment, which was then stationed at Loodianah. Lieutenants Torekler and Goldney, had not been for two years, previously, on friendly terms,---rather unfriendly, I gather from the letters which will be offered in evidence, and which allude to the terms on which they had hitherto been, and to which therefore it is necessary for me to refer. I do not believe however, that any decided or open rupture had taken place, before the commencement by Lieutenant Torekler of a private Service correspondence with Lieutenant Goldney on the 5th May; which exhibits some degree of asperity on the part of both of the parties, which is not to be easily accounted for, if it be true, as I am informed, that there had not been any personal quarrel between them, and indeed nothing more than a mutual dislike to each other and a coolness in consequence of that dislike. For a few months indeed previously to this time, viz: from the month of December 1827. to March 1828, Lieutenant Goldney had been absent from the Regiment nevertheless on the 5th May, a cor-

correspondence commenced, to one letter of which unfortunately, the whole of this unhappy transaction may in a great measure be ascribed. The cause of this correspondence will be best understood from the letter itself, which will be presently read, but which relates to a supposed interference by Lieutenant Goldney with the duties of Lieutenant Torckler's situation as Quarter Master of the Regiment, thus proving the truth of an old observation, that hatreds are often begotten from slight and almost innocent occasions, and quarrels propagated and continued in the world.

To

LIEUT. GOLDNEY.

Commanding Light Infantry Company.

SIR,

Letter No. 1. My Tindal having reported to me that your Pay Havildar has conveyed to him some orders from you, regarding the Target Practice, will you inform me if such is the case, and what was the cause of your doing so?

Your's obediently,

(Signed) W. Y. TORCKLER.

To

LIEUT. TORCKLER.

SIR,

No. 2. I recommend your ascertaining the facts of the case, before you again address a person who is not in the habit of communicating with you, unless when he is desired to do so.

in reply to No. 1.

You have not half the right to write to me that my Havildar has to speak to your Tindal.

Your's &c.

(Signed) P. GOLDNEY.

To

LIEUT. GOLDNEY.

SIR,

No. 3. Any other method of ascertaining the facts of the case in preference to the disagreeable one of communicating with you, would you must well know, have been gladly adopted by me, but as no other presented itself at the time so likely to elicit the truth, and as I could not suppose that you were so ignorant of what is due from one Gentleman to another in cases of unavoidable intercourse; I did contemplate a more polite and courteous reply from you.

No. 2. A report having been publicly made to me, that you had been sending orders to my Tindal (which I consider a very improper interference in my Department) in order to ascertain the truth. I politely acquainted you with the circumstance,---You have not denied, nor have chosen to give me any information regarding it.

Your's Obediently,

(Signed) W. Y. TORCKLER.

In consequence of this private Service correspondence, Lieut. Torckler reported Lieutenant Goldney officially to the Commanding Officer of the Regiment, who accordingly sent for Lieutenants Torckler and Goldney to attend at his Quarters, and in presence of Captain Wilton of the 4th N. I. and Lieut. Macdonald the then Adjutant, ordered to be read to Lieutenant Torckler, a reply to his letter--- It is necessary for me here to state, once for all, that, in the sequel, the correspondence which ensued on this occasion was, by order of Brigadier Genl. Adams, C. B., Commanding the Sirhind Division, expunged from the letter Book, and the whole of it ordered to be destroyed, which however was only done in part,---here and there, therefore, a letter may be wanting,---I shall mention where it is, and oral proof will then be brought to supply the links deficient in the chain of my narrative,---Major Holbrow; on this occasion, that is on the evening of the 5th May, personally ordered both Lieutenants Goldney and Torckler, to refrain from any further correspondence on the subject of their difference, and ordered them not to take any *private* notice of it; for, as I before observed, the notes exhibited a spirit of animosity, quite unsuitable and uncalled for; and the tempers of both parties are alluded to in a subsequent part of the correspondence, in a way that induces me to believe them naturally warm, and easily excited.

It appears that after this affair had been adjusted by Major Holbrow, Lieutenant Goldney sent into the Adjutant's Office, a public letter, or Statement, on the very subject which had been decided: This was returned to him on the following morning, with a letter, expressive of the reasons of its being returned, and acquainting Lieutenant Goldney, that should circumstances require it in future, it would be called for.

Notwithstanding this prohibitory Order, and admonition to drop it altogether, Lieutenant Goldney on the following morning, sent to Lieutenant Torckler through the medium of a private friend, a Copy of this Statement, or public letter; which *he* retained and reported to Major Holbrow that it had been sent to him, and as it contained reflections on his character, he requested permission to wait upon Major Holbrow for his advice, which request was granted.

On the same day Lieutenant Goldney was apprized of the Commanding Officer's displeasure, for having in violation of his Orders, communicated the Copy of his Statement to Lieutenant Torckler, and it was suggested to him to withdraw it. He refused so to do, and the whole affair was laid before Lieutenant Colonel Stewart, Commanding the Station.

Before the decision of Lieutenant Colonel Stewart was received (the reference to him) being dated the 8th of May, Lieutenant Torckler who well knew that it was the intention of Major Holbrow to make that reference himself, on the 8th May wrote a public letter to the Adjutant, complaining of the unjust and unmerited calumnies of his junior Officer, Lieutenant Goldney, against whom, in the same letter, he preferred the following charges for endeavouring to provoke him to fight a duel.

I Charge Lieutenant Phillip Goldney, 4th Regiment Native Infantry with conduct unbecoming the Character of an Officer and a Gentleman, and subversive of Military discipline.

1st. For conveying to me his junior Officer, on the 6th May 1828, through the medium of Lieutenant Salter of the same Regiment, the copy of a Public letter dated 5th May, 1828, signed by Lieutenant Goldney, and addressed to the Adjutant of the Regiment, containing wilful and malicious misrepresentations of my conduct, and impeaching my character as an Officer and a gentleman, with the evident intention of inducing me to take private notice of an affair on which Lieutenant Goldney knew Major Holbrow had positively interdicted all further discussion between us.

2d. For persisting to forward a Public Letter dated 8th May 1828, containing malicious and wilful misrepresentations of my conduct and impeaching my Character as an Officer and a Gentleman, after Major Holbrow Commanding the Regiment had recommended Lieutenant Goldney to withdraw the said letter.

L O O D I A N A H

(Signed)

W. Y. TORCKLER,

8TH MAY, 1828.

Intr. and Qr. Mr. 4th Regt. N. I.

The letters and charges were returned to Lieutenant Torckler, with a letter conveying the expression of Major Holbrow's surprise that such documents should have been forwarded, while the subject was under the consideration of superior authority.

Not content with this, Lieutenant Torckler on the same day, forwarded his charges against Lieutenant Goldney, to the Station Staff Office,---On which day, viz. 9th May, Lieutenant Colonel Stewart's decision on the subject of their differences, was communicated to the Officer Commanding the 4th Native Infantry.

On the following day, the 10th May, a copy of that decision was forwarded to Lieutenant Torckler, and he was desired to intimate without delay, whether he would abide by the recommendation of the commanding Officer, which was---that Lieutenant Torckler, [I quote the words of the letter] he requested to withdraw his very improper letters, and Lieutenant Goldney his equally objectionable Statement : and then that the whole should be expunged from the records of the Adjutant's Office.

It was in the conclusion of his letter intimated that, however unwilling Colonel Stewart was to trouble the Brigadier General Commanding the Division with a reference on a subject which did not reflect credit on either of the parties, and in the event of either refusing to adopt his suggestion, he would certainly do so.

The consequence of this decision, was that Lieutenant Goldney agreed to withdraw his statement, that Lieutenant Torckler, persisted in preferring his Charges; and in his reply to the letter just mentioned (it, and the reply being, dated the 10th May) he complains that the Commanding Officer Major Holbrow had not placed Lieut. Goldney in arrest.

• The correspondence and Charges were forwarded for the consideration of Brigadier General Adams C. B. whose decision was returned in a letter dated

14th May, No. 182---which directed the whole of the correspondence to be destroyed, & Lieut. Goldney to be admonished, for his reply to Lieut. Torckler's first note ; this was acceded to, and a report made to General Adams that his recommendation had been acceded to.

Here, Gentlemen, might have terminated the whole of this unpleasant controversy on a trivial and unimportant point ; but no,---Lieutenant Torckler, after attending at the Quarters of Lieutenant Colonel Stewart, to hear the decision of General Adams read to him, still hesitated about giving up his part of the correspondence, as he still, [his letter says] felt aggrieved, and solicited permission to apply for redress to higher Authority, and wished therefore to retain the correspondence in his own hands.

In reply to this, he was *ordered* to send the correspondence to the Station staff Office, but before doing so, wrote to know whether the instructions verbally given him so to do were the positive instructions of the General Officer or of the Officer Commanding the Station, and intimating that if they were so, in due obedience to higher Authority, he would, *as an Officer*, lose no time in complying.

In the end he did give up the letters, but protested against this invasion of his personal and private property, for writing which letter, which was forwarded to the Head Quarters of the Division, it appears that he apologized in a public letter of the 31st May,---and it is here due to Lieutenant Torckler to say that this apology was spontaneous and voluntary, and that he made it before the decision from the Head Quarters of the Division was received.

It arrived on the 2d June, and it was instantly communicated to Lieut. Torckler ; it acquainted him that unless he retracted his offensive letter of the 29th May, to the address of the Station Staff, and made a suitable apology to Colonel Stewart, the whole would be submitted to His Excellency the Commander in Chief, with a recommendation that he be removed from his staff appointment.

Lieutenant Torckler made the required concession, and here the correspondence terminated.

I offer it as evidence, of Lieutenant Torckler's resentment against Lieutenant Goldney, and as exhibiting the pertinacity with which he endeavoured to bring him to a Court Martial. It will be hereafter seen how that correspondence is connected with the occurrence of the 9th August.

About the 25th of October following, while the Regiment was on its march down from Loodianah towards Sultanpore; Oude, Lieutenant Torckler was anxious to accommodate his differences with his brother Officers ; with most, if not, all of whom he was on bad terms, and with this view he wrote a note to Lieutenant Goldney. The original has been destroyed, but Lieutenant Torckler on the one hand, and I, on the other, consent to place a Copy he kept of it, before the Court for admission.

No. I. Lieutenant Torckler presents his compliments to Lieutenant Goldney, regrets extremely the misunderstanding that has existed between them for a length of time past, and should it be agreeable to Lieutenant Goldney, he will do himself the honor of calling upon him, as this may be the last opportunity he may have of explaining matters, since Lieutenant Goldney is shortly about to leave the Corps, and Lieutenant Torckler is anxious to be reconciled to him ere he does so.

CAMP KURNAUL; }
26th October, 1828. }

The reply sent by Lieutenant Goldney was to this effect that he could not see Lieutenant Torckler but sub-sequently Lieutenant Goldney sent him the following letter.

S. R,

On consideration I have thought it better to put you in possession of my sentiments on the subjects alluded to in your note of this morning. I have every wish to abide by Major Holbrow's recommendation of yesterday evening, and to encourage the general unanimity of the Officers of the Regiment, but it is necessary that I should declare my feelings on this subject.

I did not, certainly, expect to receive any overtures of the nature made by you, and altho' I am bound to feel obliged by your voluntarily coming forward to proffer an explanation and reconciliation with me, yet it is impossible that an alienation (to use the mildest term) of nearly three years can be effaced in five minutes conversation.

Scarcely a fortnight now remains before I quit the Regiment for a considerable period; and that is so short a time that it is neither very probable nor of much consequence that an acquaintance should be cemented between us; but if on rejoining the Regiment, I find the harmony of my brother Officers as a body has not been interrupted by your means; and that your conduct has continued to justify the sincerity of your present declarations. I assure you that no remains of private pique shall interfere to prevent my being on such terms of intercourse and civility with you as the hitherto apparent difference of our dispositions and pursuits may admit of.

These are my own uninfluenced sentiments. Your already expressed wishes are perfectly sufficient for me; but if after perusing the above you still wish to communicate personally, if you will be good enough to name any third person in whose presence we can meet, and avoid mutually all irritating topics, I cannot object to do so whenever you please.

KURNAUL; 26th }
October, 1828. }

Your's Obediently,
(Signed) PHILIP GOLDNEY.

Lieutenant Torckler called upon Lieutenant Goldney the next day, and after expressing his regret that he should have entertained his late opinions of Lieutenant Goldney and other Officers, entreated him not to refuse his hand; Lieutenant Goldney accordingly acceded to his request---and a few days after returned his visit---from which time till the 13th November, they remained on the most distant terms possible.

On that day Lieutenant Goldney left the Regiment at Aligarh, having been appointed to act as Interpreter and Quarter Master to the 36th N. Infantry.

On the 29th of June last, Lieutenant Goldney rejoined the Regiment, as Interpreter and Quarter Master, in the room of Lieutenant Torckler, who was in close arrest, in consequence of a series of representations and references which had been made against, and some by him, to the Commander-in-Chief, and who had been removed from the appointment,---With the nature of those references and representations, I do not conceive the present Trial has any thing to do,---They are only disputes between Major Holbrow, as Commanding Officer of the 4th N. I. and Lieutenant Torckler, whose conduct rendered it necessary, in the month of April, to bring him to the notice of His Excellency the Commander-in-Chief, who was pleased to remove him from his Staff situation:---this was communicated in a letter from Head-Quarters, dated the 22d May---and Lieutenant Goldney was appointed to succeed him.

Again in the month of June, some public correspondence took place, on which occasion Lieutenant Torckler, preferred some complaints against Major Holbrow, which being laid before the Commander-in-Chief, caused his removal from the 4th Native Infantry to do duty with the 48th N. I. in the hope that he might have an opportunity of reflecting on his errors, and on the lenity with which they had been noticed,---This result was communicated to Lieutenant Torckler on the 8th of August.

Before I detail the occurrences of the following morning, (*that mentioned in the Charge*), (It will be necessary to revert to some circumstances which took place soon after Lieutenant Goldney rejoined, & the Court will now I hope perceive the necessity I have been under of detaining its attention so long.

On Lieutenant Goldney's return, he was informed that Lieutenant Wilcox, who is Lieutenant Torckler's Brother-in-Law, had during his absence with the 36th Native Infantry, been vilifying and aspersing his Character,---Lieutenant Wilcox having heretofore been on very friendly terms with Lieutenant Goldney, the latter did not at the time give credence to the report, and he did not therefore ascertain the foundation on which it rested for a short time after.

Not long after this, a misunderstanding took place between Lieutenant Wilcox, and Lieutenant Salter; with the latter, Lieutenant Goldney is, I believe, very intimate, and he was therefore requested to explain to Lieutenant Wilcox, Lieutenant Salter's reasons for wishing their intercourse to cease,---Viz., because Lieutenant Wilcox had given up private conversation and correspondence to be made public use of by his Brother-in-Law Lieut. Torckler.

This occasioned a coolness between Lieutenant Goldney & Lt. Wilcox, who wished to depute Lieut. Torckler, to confer with Lieut. Goldney on the subject. Lieutenant Goldney declined to meet him, and assigned as the ground of that refusal that he was not on terms with that Officer referring at the same time to his note of October last, *why* he was not on friendly terms---Viz., because Lieutenant Torckler had relapsed into his former life, and had disturbed the harmony of his Brother Officers, by references and other disagreeable behaviour.

Lieutenant Goldney now determined to ascertain the truth of the report that Lieutenant Wilcox had spoken to his disadvantage, and Lieutenant Wilcox, not giving to Lieutenant Goldney's friend a satisfactory explanation, Lieutenant Goldney made use of expressions which obliged the other to call for immediate satisfaction.

They accordingly prepared to meet, when it was intimated to Lieutenant Goldney that it was the opinion of four Officers, their names must be mentioned, (viz: Captain Wilton, Lieutenants Oldfield, Salter and Wilkie,) that Lieutenant Torckler ought not to be Mr. Wilcox's second, and was not entitled to appear in the field with Lieutenant Goldney in any capacity, after having in May 1823, endeavoured to bring him to a Court Martial, upon a private quarrel.

This opinion being intimated to Lieutenant Torckler, who notwithstanding his being in arrest, was on the ground, he now left it; and the affair between Lieutenants Goldney and Wilcox terminated amicably.

About an hour after this, Lieutenant Wilcox took to Lieutenant Wilkie, one of the four Officers above mentioned, the following note:---

No. 1. Copy of a letter from Lieutenant Wilcox to Lieutenant Wilkie, no date, but received on the 19th July 1829, in the afternoon.

MY DEAR WILKIE,

I am requested by Lieutenant Torckler to state that he solemnly avows, that in the affair with Lieutenant Goldney, alluded to by yourself and three other Officers of the Corps conveyed through Ensign Becher, as an objection to his acting as my friend in the field, Lieutenant Torckler solemnly avows that however indiscreetly and unadvisedly he may have acted in it, he was not influenced by any motives of timidity, as he is willing now to prove by giving Lieut. Goldney, yourself, and the other Officers instant satisfaction and unless they consent to this he will post you all four as cowards and blackguards throughout the whole army.

Your's Sincerely,

(Signed) L. WILCOX.

No. 2. Copy of a letter from Lieut. Wilkie to Lieut. Wilcox.

Lieutenant Wilkie acquaints Lieut. Wilcox that he has, as he warned him he should do, shewn the note brought by him, to the Officers concerned; who are of opinion that the document is of such nature, as to render it impossible for them to allow Lieut. Wilkie to fulfil the pledge of not making it public, into which he was inadvertently surprised.

Lieutenant Wilkie is requested by the Officers alluded to, to state that unless a most ample apology for writing and being the bearer of that paper, be forwarded to Capt. Wilton without delay, the whole will be immediately laid before the Commanding Officer.

No. 3. Lieut. Wilcox regrets that he should have been the bearer of a paper containing any thing of an offensive nature to Lieut. Wilkie, and four other Officers of the Corps, on the behalf of Lieut. Torekler, which on due reflection, he is fully sensible of, and apologizes for the same, and begs that the letter may be returned to him.

SULTANPORE OUDE; 19TH JULY, 12 P. M.

The above was returned by Lieut. Wilkie, as not satisfactory, & the correspondence was submitted by Capt Wilton, to the Commanding Officer on the morning of the 20th July.

An apology signed by Lieut. Wilcox in presence of Major Holbrow, and Captain Caley.

Lieut. I. Wilcox regrets extremely that he should have been so far led away by his youth and inexperience as to have written, or have been the bearer of a paper containing such offensive and insulting language from Lieut. Torekler to Lieut. Wilkie, and four other Officers of the Regiment, any intention on his part to insult or give offence he totally disavows; and Lieutenant Wilcox will ever feel sensible of the lenity shewn by Lieutenant Wilkie and the other four Officers, and now once more begs that the note in question may be returned.

SULTANPORE, OUDE; }
20th July, 1829. }

(Signed) I. WILCOX, Lieut.
4th Regiment.

The above was sent by Major Holbrow to Captain Wilton.

No. 5. SULTANPORE, OUDE, 20TH JULY.

My dear Major,

I have submitted the apology to the Officers concerned, and at your request they have consented to accept the apology from Lieutenant Wilcox, and they hope that that Officer will never give them cause to repent that they have not had recourse to such measures as would effectually have prevented a repetition of his offence.

Your's Sincerely,

(Signed) GEO. ROBT. WILTON.

I shall hereafter by evidence prove, that this note was not written with the consent or approbation of Lieutenant Wilcox, and will connect it with Lieut. Torekler, as its writer or instigator,—and I shall submit it to the Court, as strong proof, of Lieutenant Torekler's subsequent intent against Lieutenant Goldney.

No notice of Lieutenant Torekler was taken on this occasion; as he was under arrest, and it was supposed could not fail to be tried for his representation of the 13th of June.

Nothing more occurred till the end of July and beginning of August, when Lieutenant Goldney in his capacity of manager of the Book Society wrote a Circular round to the Members, requesting that same Books which had been detained too long by some one, might be returned. The reply to the Circular, of Lieutenant Torekler, I shall lay before the Court, as evidence of the rancorous animosity of that Officer to Lieutenant Goldney.

If there be no objection, I may as well read it here ;

DEAR GENTLEMEN,

N^o . 1 . It is requested that the person with whom "Tom Raw-
the Griffin" is, will be good enough to send it to me if he has done with
it.

SULTANPORE, }

(Signed) P. GOLDNEY,

30TH JULY, }

Officiating Manager, B. S.

N^o . 2 . Lieutenant Torckler desires to intimate his intention to discontinue his
subscriptions to the Book Society from this date, and returns "Tom
Raw" "the Griffin," alluded to in the *elegant* and *polite* Circular of the
Officiating Manager a few days since.

2ND AUGUST, 1829.

I now come, Gentlemen, to the morning of the 9th August---the date of
this unfortunate transaction.

If I am correctly informed, Lieutenant Torckler, on the preceding day,
had received the Orders of His Excellency the Commander-in-Chief to proceed to
Allahabad, where he was to do duty with the 48th Native Infantry, and was to
leave Sultanpore by Dawk on the 12th,--- On the morning of the 9th about the
hour of eight o'clock, on Sunday, Lieutenant Goldney, was still in his bed
room, when a bearer announced to him that---"Torckler Sahib had arrived." Lieut.
Goldney, having been unwell, mistook the name for that of---"Doctor Sahib,"--On
going out of his room he found the Prisoner muffled up in a Cloak,---Lieut. Torckler
accosted Lieut. Goldney, but what he said I have not enquired,--Lieut. Goldney
interrupted him by saying---"I thought it was the Doctor, leave my house Mr.
Torckler, I can have nothing to say to you---" He repeated the observation to Lieut.
Torckler, and was conducting him ; [*how, whether violently or otherwise, I shall
hereafter prove,*] to the Verandah, where Lieut. Torckler produced a note, and stop-
ped---this note, in the original I will read presently,---it was picked up by
some one of Lieutenant Goldney's servants.

I, Philip Goldney, Lieutenant of the 4th Regiment Native Infantry, have
no cause whatever to be dissatisfied with the conduct of Lieut. Torckler of the
same Regiment, as a gentleman and a man of honour.

SULTANPORE, OUDE; 9TH AUGUST, 1829.

On producing it, Lieutenant Torckler said to Lieutenant Goldney, " If
you do not acknowledge that I have offered you the satisfaction of an Officer and
a gentleman," ---Lieut. Goldney said to him.---" leave my house, Sir,---" when
Lieut. Torckler refused, and seized Lieut. Goldney's arm,---in consequence of which
and of the haggard, and desperate countenance of Lieutenant Torckler, he retreated
to his bed room---on entering which he shut the door.---Lieutenant Torckler fol-

lowed him--this is important--most important indeed--earnestly therefore do I implore you to attend to this one fact,---for on it, on my judgment, in a great measure hangs your verdict,---I say that Lieutenant Goldney retreated to his bed room, and shut the door, and that Lieutenant Torekler followed him,--and *pulled open* the doors,--on doing which Lieutenant Goldney drew from under the pillow of his bed, a pistol loaded, and said to Lieutenant Torekler,---“very well, Sir, if you will not leave my house” ; at these words, the Prisoner who on seeing Lieutenant Goldney’s pistol, had recoiled two or three paces, drew a brace of pistols from underneath his cloak, one of which he instantly discharged at Lieutenant Goldney, who thereupon, *and not before*, this I affirm, and will prove on Oath, *he thereupon and not before* pulled the trigger of his pistol which missed fire,---and the Prisoner immediately discharged a second pistol at Lieutenant Goldney, who rushed in upon the prisoner, and threw him on the bed, where he secured him till a crowd of people came to his assistance, and feeling himself grasped by a stranger’s hand, and imagining that Lieutenant Torekler had accomplices with him, Lieut. Goldney on being extricated, immediately sought Major Holbrow’s protection and there the matter ended ; one of the Balls fired on this occasion, was picked out of the Wall in Lieutenant Goldney’s room.

Now, Gentlemen, in a deed so atrocious, in a case which promises to be so intricate, it will require all the caution possible, to determine whether Lieutenant Torekler did, as the Charge states, fire at Lieut Goldney, with the malicious intention imputed to him, viz. to murder him.

It may be asked by the Court, or by the Prisoner, what business Lieut. Goldney had to have loaded Pistols in his room, and as this is a circumstance which, but for the explanation I am going to give, would be very suspicious, but which, when put in its proper light, establishes in my opinion the intent of Lieut. Torekler to be as the charge declares ; I beseech the Court’s patience while I state it, and here I beg at Lieut. Goldney’s particular request to mention that it was not intended on the part of the Prosecution, to produce to the Court a Native Girl, who has been for some time under his protection, nor am I yet certain whether she will be required. The bed of this woman, was in the room where the pistol was ; and under her pillow, and it will be important to know how it came to be loaded, and however wrong or unfounded, the suspicion may have been, and however grating to the feelings of the Prisoner to know that the most diabolical and unchristian-like intentions were imputed to him before this occurrence, my duty and situation peremptorily demand that I shall not conceal two facts, one of which I will prove and let the Court reflect on ; the other will not be so easily established, but must nevertheless be adverted to.

Shortly after Lieut. Goldney returned to his Regiment in June, a rumour reached him that Lieut. Torekler was in the habit of appearing in a Native Dress, and I can hardly bring myself to utter it, but uttered it must be--was connected with some ruffians in the neighbourhood--Gentlemen, do not believe that I make this horrid, this infernal report of his supposed intentions, on light or an substantial grounds, I have an awful duty to execute, and stand impartially before me to state it. On the 18th or 19th July, in consequence of Lieutenant Wilcox’s de-

declaration, in behalf of the prisoner, that he would publish Lieutenant Goldney and four more officers; cowards and blackguards to the whole Army, unless they consented to meet him, and receive *instant instant* satisfaction. Lieutenant Goldney became alarmed, and accordingly loaded a pistol; and peremptorily prohibited the admission of the Prisoner within his premises.

On the receipt of Mr. Wilcox's letter, the rumour I have alluded to struck Lieut. Goldney; this was on the 19th July, and he had his pistol brought every night for some days for priming.

In time the impression on his mind, was effaced, and the pistol lay under his pillow, unheeded and not newly primed, at the particular request of his Native Girl who was close upon her confinement; her request was founded on a curious belief of Hindoos in general, of their security from evil if they have iron near them when asleep. Niz. Adaw. Rep. 1357 383.

Thus it is I submit plain that Lieut. Goldney's pistol being there, under her pillow, is not to be attributed to any improper motive.

As I before had the honor to state, the *malice* required in a case of murder, or in an attempt to perpetrate one, is not so properly, spite or malevolence to the individual assaulted as any evil design in general; the dictate of a depraved, wicked, and malignant heart—and that that dictate, and the malicious intention of a man's mind, in any occurrence, were to be *inferred* from external *circumstances*, as lying in wait, antecedent menaces, former grudges, or animosity, or concerted scheme to do a man some grievous bodily harm. —

It is therefore my purpose to mention the other fact, which a short time ago, I said my situation as Prosecutor in behalf of the Crown would not allow me to conceal, and I think I shall not be laying too great stress on it, when I advance it as a very strong and almost irresistible proof of the Prisoner's *malice* against Lieut. Goldney, and the other Officers whom he threatened to post as Cowards and Blackguards.

It is then the fact of Lieutenant Torekler's having, while under arrest, [he was placed in it on the 17th April.] been in the habit of practising with a pistol and bullets, at the figure of an Officer of the 4th N. I. in the Verandah of his house, — I will prove this figure to have been intended for *that* Officer, — and I will then prove that this figure being drilled with bullets, another target was put up in the Zenanah of his Compound, where the same practice was continued by Lieutenant Torekler, and I would then with confidence put it to the Court to say, whether or no this practising is not evidence of a mind fatally bent on mischief towards some one, — particularly if I establish the fact that Lieutenant Torekler, being in arrest at the time, avowed his determination to ruin the man, whom that figure was intended to represent, declaring at the same time that he was reckless and indifferent as to what might be the result to himself for so doing.

I fear I have wearied the Court with this long detail, but I deemed it better to trespass on your time, than to omit an observation which could in any manner conduce to a thorough understanding of the subject, which is necessary both to the safety of the Prisoner and to the impartial administration of Justice.

I would submit that the ostensible cause of Lieutenant Torckler's visit was to bully Lieutenant Goldney into signing the paper he produced to him, in consequence of the latter having declined to meet him as the second of Lieutenant Wilcox,—that, that refusal was occasioned by the private Service correspondence in May 1828,—and I have therefore endeavoured to trace it from the commencement to the end.

The only question therefore is, was malice, -- the director, the mover, and instigator of Lieutenant Torckler's mind in doing what he did.---If *all* that has occurred since May 1828, be considered, I do not see how any rational doubt can be entertained as to the answer to this question,---Lieutenant Torckler commenced a private Service correspondence, which very soon displayed his hostility to Lieutenant Goldney ; he reported him successively and preferred Charges against him to the Officer Commanding the Regiment, the Station, the Division, and but for the fear of losing his appointment, would have carried them up to the highest Military authority, and would have brought Lieutenant Goldney to a General Court Martial,--for maliciously and falsely misrepresenting and calumniating his Character.

Does a man preferring such Charges, feel no resentment against his traducer?---To take a long stride from May 1828, to May 1829, did not Lieutenant Torckler by his Military insubordination lose his appointment which was given to that Individual who had been shielded from his Charges, & who now succeeded to his vacant situation ? Was this no ground for envy, hatred, and revenge?---So great is the power and force of the human imagination when not under the wholesome correction of Religion, that even the most innocent success of another person, contrasted with our own ideal, and imaginary misfortunes, creates a species of injury and resentment, which the inordinate and uncontrolled spirit of envy often leads to malice an unwary mind.

Does Lieutenant Torckler's practising with a pistol at the figure of an Officer, inside his house, betray that *implied* malice, and enmity, which the law will presume from unlawful and unusual acts :---would any man unless of an abandoned heart do this, ?---is the fact, if proved as it shall be, satisfactorily to you that his general design was evil,---that his practice was in the words of the law, "the dictate of a wicked, depraved, and malignant heart?"

Does Lieutenant Torckler's note in reply to the Circular about the Books, discover, or no' resentment and animosity towards Lieutenant Goldney,---Does his threatening to post this and four more Officers, as Cowards and Blackguards, unless they received from him instant satisfaction, evidence, or supply that part of the definition of *malice* which is given by Mr. Justice Blackstone?---as antecedent menaces and former grudges ? and lastly, does not Lieutenant Torckler's going to Lieutenant Goldney, at such an hour as eight in the morning, muffled up in a cloak, in the month of August, with pistols loaded, and concealed, betray that formed design, that deliberate purpose, and sedate mind, which Mr. Justice Blackstone calls---"lying in wait ;"---and lastly, taking into your serious consideration all these circumstances does or does not, Lieutenant Torckler's *following* Lieutenant Goldney, as *he retreated*, prove distinctly that his intention was to do him some personal harm..

As was before submitted to you "no affront by words or gestures only, can be permitted to excuse or extenuate such acts of violence as manifestly endanger the life of another."

And again "if one executes his revenge upon a *sudden provocation*, in such a cruel manner with a *dangerous weapon*, as shews a malicious and deliberate intent to do mischief, and *death ensues*, it is *express Malice*, from the nature of the fact and *Murder*,"—for the act is *cruel, unlawful, and deliberate*, and tends by necessary and almost inevitable consequence, to the hurt of another—"Wood's Inst.—34

Mr. President and Gentlemen, I have concluded—To you, Society will look for protection from the hands of an assassin---and to you also will look the Prisoner for the preservation of his life, his honour, and his happiness for the future,---But Gentlemen, it must be borne in mind, that although Justice is to be administered in mercy, the brightest attribute of the Law of England, self preservation also claims its impartial administration---the safety of the innocent is in the punishment of the guilty ; by the sacrifice of a few, many shall be saved from destruction,--therefore, shew mercy, if you can, but bear in mind that mistaken lenity to atrocious delinquents is a cruelty to the public, and the extension of mercy to the undeserving, is an improper compromise with criminals,---it is triumph to the guilty, it is depression to the innocent, and in the end will most assuredly recoil on the heads of those who grant it.

I consign the Prisoner and his case to the consideration of this Court, in the full and certain belief, that no considerations of pity and compassion, on the one hand, or prejudice of any kind, on the other, will for an instant induce it to swerve from severe and stern impartiality.

EVIDENCE FOR THE PROSECUTION.

Lieutenant Phillip Goldney of the 4th Regiment Native Infantry, is called into Court and duly sworn.

Examined by the Deputy Judge Advocate General.

Question. What rank did you hold, and in what Regiment Native Infantry on the 9th of August?

Answer. I was Interpreter and Quarter Master of the 4th Regiment Native Infantry, at Sultanpore.

Question. Do you remember having a private service Correspondence with Lieutenant Torckler, about the month of May 1828?

Answer. Not a private service Correspondence, but a Correspondence; I don't know that it was private service.

Question. Have you any of the letters or notes that passed on that occasion, or copies?

Answer. No. Not of any private notes to Lieutenant Torckler; I have no notes addressed to Lieutenant Torckler.

The witness is directed to withdraw.

The Correspondence alluded to is here read by the Deputy Judge Advocate General.

Vide Correspondence, A, Appendix. Letters No. 1 to 52 Page 1 to 26

The Witness is recalled. Examination by D. J. A. G. continued.

Question. Do you remember receiving a note from Lieutenant Torckler, on or about the 25th or 26th of October 1828, at Kurnaul?

Answer. About that time.

Question. Have you got that note or any copy of it?

Answer. No. I have not.

Question. What became of it?

Answer. I do not know, I did not keep it.

Question. Will you admit this to be a correct copy of it? Vide Appendix, letter No. 1, Page 49.

Answer. I admit it to be to that purport.

Question. Did you reply to it.

Answer. I did.

Question. Do you acknowledge this to be the reply?

Answer. That I believe to be my letter, Appendix No. 2. Page 50.

Question. Did you send any subsequent reply?

Answer. I did, a short time after the first.

Question. Do you acknowledge this to be the second reply? Appendix No. 3. Page 50.

Answer. Yes, I believe that to be my hand writing, (The three letters are here read.)

Question. Did you receive any reply to this last letter?

Answer. No I believe not, I am pretty sure I did not.

Question. Had you on that or any subsequent day any personal communication?

Answer. I cannot name the day, but on that, or the next, I had.

Question. State what passed at the interview?

Answer. Lieutenant Torckler came to my tent by himself, he began by expressing his regret, for what had occurred, alluding I suppose to May 1828, said he had been misled in his opinion of my conduct, and expressed his determination to be on good terms with myself and the Officers in future. He concluded by saying I hope you will not refuse me your hand, he held out his hand and I took it, and told him I should repay his visit when I rejoined the Regiment.

Question. Did you shortly leave the Regiment, and on what account?

Answer. I left the Regiment about a fortnight or probably more, after this occurred, in consequence of having been appointed officiating Interpreter to the 36th Native Infantry at Aigurh.

Question. Had any circumstances taken place between you, and Lieutenant Torckler, between May 1828, and this last Correspondence, to which he could have alluded when regretting what had taken place.

Answer. To the best of my recollection, I believe none whatever, certainly nothing personal to me as an individual.

Question. On what terms were you and Lieutenant Torckler from the period of your interview to that of your departure?

Answer. On the most distant terms consistent with being on speaking terms. I believe I may have asked him to take wine at the Mess. (Vide correction at the end of this Evidence A.)

Question. On what terms had you been with him previously to the Correspondence of May 1828?

Answer. We had not been on speaking terms for some time, I cannot say how long.

Question. Had you before that Correspondence, occasion to complain of him either publicly or privately on any subject whatever?

Answer. I had occasion to ask the Station Staff, whether Lieutenant Torckler had authority to cut my trees or not, as I considered his ordering my trees to be cut might be done in his official situation as senior Quarter Master, of

the Station, but I had no angry Correspondence with him, to the best of my recollection.

Question. How long was this before this Correspondence ?

Answer. It must have been shortly before. within two Months.

Question. What reply did you get to your inquiry, and in writing or verbally ?

Answer. I cannot state whether verbally or in writing, but it was to the effect that I need not trouble myself about it, that my trees would not be cut.

Question. Who was Station Staff Officer at this time.

Answer. Lieutenant Macdonald of my Regiment.

Question. When did you rejoin the 4th Native Infantry, and on what account ?

Answer. I received a communication at Aligarh, notifying my appointment as Interpreter to my own Corps, I proceeded to join by dawk, and joined on the evening of the 29th June, last.

Question. Did you as you promised, conditionally, in your interview with Lieutenant Torekler, return his visit ?

Answer. I did not.

Question. State the reason of your not doing so ?

Answer. I found Lieutenant Torekler in arrest, and on bad terms with all the Officers but two, to the best of my belief. I considered he had violated his profession of October 1828, and, therefore, that I was not called upon to pay him a visit---to be on terms with him.

Question. Who were those two Officers ?

Answer. Lieutenant Wilcox and Ensign Becher.

Question. State the ground of your belief that he had violated his professions of October 1828 ?

Answer. Because he declared in October 1828, his intention of being on good terms with the Officers, and promised to give up his plan of vexatious Correspondence,--- Now when I returned, I was given to understand that he had resumed in every respect his former system, which I entirely and most completely disapproved of and he had interrupted the harmony of the Regiment, since he had declared in October that he would not.

Question. Did you in any manner convey to him this reason for not returning his visit ?

Answer. No.

Question. Was he living alone, or with whom if not alone ?

Answer. I never was in his house, but to the best of my knowledge, not with any Officer.

Question. Were you engaged in any correspondence with Lieutenant Wilcox, either personally or thro' a friend, after your return to the corps ?

Answer. Yes I was.

Question. State what about if you please ?

Answer. I was requested by Lieut. and Adjutant Salter a friend of mine in the same Regiment, in reply to a letter from Lieutenant Wilcox, to Lieutenant Salter, to explain to Lieutenant Wilcox, Lieutenant Salter's reason for wishing their intercourse to cease.

Question. Had you any other correspondence or intercourse with Lt. Wilcox ?

Answer. In the course of the arrangement of this affair, Lieutenant Wilcox wished to refer me to Lieutenant Torekler to settle it. I declined alleging that it would be better.* I expressed myself to the effect, that I was not on terms with Lieut. Torekler, and that in an affair of this sort, it was better arranged by the conferring parties being on good terms, and I referred Lieutenant Wilcox to my letter to Lieutenant Torekler of October 1828, to show why I was not on terms. I did not consider myself on good terms and declined seeing him.

Question. Had you occasion yourself to depute any person to Lieutenant Wilcox, on your own account, and if so on what ?

Answer. I had to request some explanation from Lieutenant Wilcox regarding words, alleged to have been made use of by him regarding me during my absence at Alighur.

Question. What were those words if you remember ?

Answer. Lieutenant Wilcox was alleged to have said he had been ill-used by me in an affair of honour in which I was his second.

Question. Whom did you depute to ascertain the explanation required ?

Answer. Ensign Becher as being almost the only Officer on sufficiently good terms with Lieut. Wilcox.

Question. What was the result of that conference ?

Answer. I desired Ensign Becher to tell Lieutenant Wilcox, that from the very friendly terms we had always been on I did not believe that he had said what was alleged, but that I wished him to deny it, to satisfy others. Lieutenant Wilcox to my astonishment demanded my authority which was given, and a note or two passed, between him and Lieutenant Wilkie in consequence. Lieutenant Wilcox did not deny it to my satisfaction, and I gave him my opinion in such terms as made him call me out for it.

Question. Did you meet ?

Answer. We did.

Question. Who was his second in this affair ?

Answer. Ensign Becher came to me with a message from Lieut. Torekler, as Lieutenant Wilcox's friend.

Question. Did he act throughout as Lieutenant Wilcox's second ?

Answer. No he was objected to.

Question. By whom ?

Answer. I was authorised and told to use the names of 4 Officers in the Regiment ; Captain Wilton, Lieutenant Oldfield, Lieutenant Salter, and Lieutenant Wilkie, giving their opinion that Lieutenant Torekler, having referred a private quarrel, in May 1828, to his Commanding Officer and ultimately sent in charges against me under circumstances arising out of that business, ought not to be allowed to act as Lieutenant Wilcox's second against me.

Question. Is the private quarrel here alluded to that which related to the correspondence you formerly mentioned ?

Answer. It is the same.

Question. Was this opinion intimated to Lieutenant Torekler ?

Answer. It was, on the ground, and he left it in consequence. I did not witness its intimation.

Question. Do you know whether any correspondence ensued in consequence of this intimation ?

Answer. Yes.

Question. Between whom ?

Answer. A letter was brought by Lieutenant Wilcox to Lieut. Wilkie, apparently in Lieutenant Wilcox's hand writing demanding instant satisfaction, the word " instant " twice repeated, in Lieut. Torekler's name.

Question. Did you see that letter ?

Answer. I did.

Question. When did this affair between you and Lieutenant Wilcox take place.

Answer. On the same day about an hour before the letter was brought.

Letter from Lieutenant Wilcox to Lieutenant Wilkie, marked B. appendix, Page 92 is here read.

Question. When you saw this letter will you swear to the repetition of the word " Instant " ?

Answer. I will.

Question. And that a pen or pencil had not been drawn through either of them ?

Answer. I cannot exactly say, the paper was of the worst description, China, and the ink was very pale but to the best of my belief I should say not.

It being four o'clock, P., M., the Court adjourns till eleven o'clock tomorrow morning.

2ND DAYS PROCEEDINGS.

Carenpoor Friday the 20th November. 1829.

The Court meets at eleven o'Clock A., M., pursuant to adjournment.

The President, Members, Deputy Judge Advocate General and Interpreter all present.

The prisoner Lieutenant Torckler 4th N. I., appears in Court.

Lieutenant Goldney recalled and reminded of his oath.

Deputy Judge Advocate General. I wish to put it to the Court, and particularly to the Members at the end of the Table near and close to the witness, whether a particular answer to a question I will read, be correct or not: It must be obvious to the Court and to the Prisoner, from the frequent Interruptions I offered to the witness when delivering his evidence, as well as from the fact of my reading over each answer as I record it, that it is my wish and intent to write down the evidence verbatim et literatim, as it drops from him, but if a question is answered in one way, and while I am writing *that* the witness adds any thing, or explains his meaning by synonymous or supplementary observations I cannot direct my attention to what I am recording and to what he is saying, at one and the same time. I do not mean to insinuate that the prisoner is not satisfied with my attempts to record the evidence correctly or that he is making captious or unnecessary objections thereto. It has however been objected that the answer, as it stands to a certain question, put by me yesterday, is not that which fell from the witness; now properly speaking, this objection should have been taken at the moment, and in future I shall feel obliged by the Members of the Court stopping me a hundred times if necessary if the replies read out by me do not agree with those delivered by the Witnesses. It may, and will impose on me additional trouble to re-write many of the answers. [if given as they were yesterday, but which I shall request the Court to allow me to prevent for the future] but in a case of this nature it is desirable on many grounds that that trouble be given me rather than that the Prisoner should be dissatisfied with the record as it stands.

Now for the the question, Vide Page 36.

Question. Was he living alone, or with whom, if not alone?

Answer. I never was in his house, but to the best of my knowledge not with any Officer."

It is intimated to me that the expression used by the witness in reply was "that man's house."

Now was this so?

It is the opinion of the Court that the expression was "that man's house."

THE DEPUTY JUDGE ADVOCATE GENERAL.

Lieut. Goldney.—I am authorized by the Court to desire you, in giving your evidence to give the answers, slowly, deliberately, and in an audible tone of voice, so that I may take your identical expressions, and while I am writing the

answer, you will be good enough to refrain from adding any explanatory or supplementary observations ; when I read each answer if you find that it is not that precisely which you gave, I will alter it, to make it correct.

Question. You mentioned yesterday in an answer to a question that Ensign Becher came to you with a message from Lieutenant Torckler as Lieutenant Wilcox's friend ; this may be interpreted in two ways, therefore state if you please whether Ensign Becher, or Lieutenant Torckler, was Lieutenant Wilcox's friend ?

Answer. Ensign Becher was desired I believe by Lieutenant Torckler as Lieutenant Wilcox's friend, to demand satisfaction.

Question. By whom were you told and authorised to make use of the opinions of the 4 Officers adverted to yesterday.

Answer. It was communicated to me by Lieut. Salter.

Question. I understand you have a Book Society in the 4th Native Infantry ; who was manager of it in June and July ?

Answer. I cannot speak to June, I was acting manager I believe in July.

Question. Do you remember sending a circular regarding "Tom Raw the Griffin" and some other Book, that had been detained ?

Answer. I do, at the request of Captain Caley.

Question. Is this the circular ? (A paper shown to the witness.)

Answer. To the best of my belief it is.

Question. Have you any doubt about the matter ?

Answer. I am certain of it, but I am on oath and do not like to swear to it ; it has been out of my possession since.

Question. Did you in consequence get the Book, and if so from whom ?

Answer. After an interval of one or two days or more I received the Book from Lieutenant Torckler, with a note.

Question. Is this the note. (Note shown to the witness)

Answer. It is.

Question. And has it been in any manner altered since you received it ?

Answer. No, in no one respect.

THE DEPUTY JUDGE ADVOCATE GENERAL READS THE TWO NOTES,

No. 1. DEAR GENTS.

It is requested that the person with whom "Tom Raw the Griffin" is, will be good enough to send it to me if he has done with it.

*Sultanpoor }
30th July, }*

*(Signed) P. GOLDNEY,
Officiating Manager Book Society.*

No. 2. Lieutenant Torckler desires to intimate his intention to discontinue his subscriptions to the Book Society from this date, and returns "Tom Raw" "the Griffin" alluded to in the *elegant* and *polite* circular of the officiating Manager a few days since.

2nd August 1829.

The above is circulated for the information of subscribers.

(Signed P. GOLDNEY,
Officiating Manager

Question. During the Month of July had you any occasion or reason to load a pistol ?

Answer. I had.

Question. State distinctly your motive for so doing ?

Answer. On the receipt of the violent letter of Lieutenant Torckler on the 19th July, I considered his desperate situation, his public Correspondence, disapproved of and punished at Head-Quarters, one or more references, then pending against him and his general conduct, a matter of disgust to every Officer present, with the Regiment,---including I believe his own Brother-in-law, Lieut. Wilcox. I considered my share of the circumstances alluded to in that letter and the light, in which he probably looked upon me, as having superseded him in his appointment of Interpreter & Quarter Master, I considered also how these circumstances, would weigh on his malicious disposition and unhappy temper---and I dreaded some outrage on his part towards myself. I gave repeated orders to my Servants generally, not to admit Lieutenant Torckler within my compound, but as my bearers were strangers to his person or nearly so, and I understood Lieut. Torckler was in the habit of wearing a Native dress, and I had heard some vague report of his having some connection, with some fellows, in the neighbouring villages, I took the additional precaution of having a loaded Pistol brought to me at night when I went to bed.

Question. You say the violent letter of Lieutenant Torckler. Is this the letter purporting to contain his threatening language, written by Lieutenant Wilcox to which you alluded yesterday ?

Answer. It is.

Question. What do you mean by the expression "his desperate situation" ?

Answer. I considered that Lieutenant Torckler, having forfeited the esteem of his Brother Officers, and at that time his commission being in danger, and hazarded, as I thought, his situation was desperate.

Question. Was he in arrest or at large at that time---the 19th of July.

Answer. In arrest.

Question. In what way was his "general conduct a matter of disgust to every Officer in the Corps."

Answer. Lieutenant Torckler was engaged in a series of vexatious Correspondence, in which every petty thing that could be raked up was to the best of my opinion.

Question. You said that when you joined on the 29th June, he was on terms with two Officers only---On what terms was he with the Officers generally at this time?

Answer. He was not on terms and I have understood not with Ensign Beecher but I cannot speak to that.

Question. What reason have you for using the term "his malicious disposition"?

Answer. I judged so from his continued and repeated attacks upon Major Holbrow, and other Officers.

Question. From whom, if you know, did you hear the rumour about his wearing a Native dress?

Answer. The impression on my mind is that it was from Ensign Beecher but I cannot swear to it.

Question. From whom, to the best of your belief and recollection did you hear a "vague rumour" respecting his supposed connection with some fellows in the neighbouring villages?

Answer. I cannot assign any person as the one from whom I heard it.

Question. But, by the oath you have taken you *did* hear it from some one or other?

Answer. I did.

Question. Do you positively affirm that the reasons you have assigned for loading that Pistol are the only ones, and the real ones of your doing so?

Answer. They are decidedly.

Question. From all that you have mentioned you considered your life and personal safety peremptorily required you to have a weapon near to you

Answer. I did consider it a very prudent precaution at the time.

Question. Where was that Pistol placed?

Answer. It was placed in a verandah room, under my Couch pillow where I slept.

Question. In the day time where was it?

Answer. I don't know; the bearer took it away in the morning.

Question. For how long a time was this practice continued?

Answer. The Pistol was brought to me regularly every night, for perhaps seven or eight nights --I can't speak to the time.

Question. When you discontinued this practice, do you know what became of it, at night?

Answer. I cannot speak to a general question of that nature without an explanation.

Question. Give that explanation?

Answer. I took it one day into the Zenanah; the impression wore off my mind of danger, and I discharged it in the Zenanah. I re-loaded it, and was

going to discharge it again, but my Native Girl being at that time near her confinement, was annoyed by the report of the Pistol, and begged me not to discharge it, or take it away, but asked to have it under the pillow of her own bed, from some superstitious idea of her own.

Question. On this last occasion of your loading the Pistol, did you also prime it?

Answer. I did.

Question. Did you comply with the request of your Native Girl?

Answer. I did.

Question. Before doing so, did you take out the priming?

Answer. No, I am certain I did not.

Question. Was there any mode of securing it from going off?

Answer. There is a stop to prevent its being cocked by any inexperienced person.

Question. Did you secure it before you gave it to her?

Answer. I did.

Question. Had you or she, any other Pistol, loaded or unloaded, near you?

Answer. No.

Question. Detail the occurrence of the 9th August on the occasion Lt. Torekler's calling at your house?

Answer. About eight o'Clock on the 9th August, I was lying on my bed, in the inner room feeling extremely unwell in consequence of some medicine I had taken the night before. One of my bearers, called to me from the other side of the closed door, and I understood him to say, "Doctor Sahib Aya". I got up and went out as I was, in a Shirt and Pajamah, and saw a person in a blue Military cloak, standing in the Verandah room, where my own sleeping Couch is always placed. I accosted him by saying good morning, or how do you do, when he turned towards me, I saw who it was, Mr. Torekler, I interrupted him, by telling him,---"I thought it was the Doctor, I can have nothing to say to you Mr. Torekler, leave my house" I repeated words to that effect, conducting him to the outer Verandah, & told him again to leave the house. There he stopped, & pulled out a paper, which he apparently wished me to take, saying some words to this effect, "If you do not acknowledge that I have offered you the satisfaction of an officer & a Gentleman." I refused to take the paper, I did not take it at least, & returned to the Verandah room. Mr. Torekler followed me, and tried to stop me by taking hold of my arm, I shook him off, and went into my inner room, the Zenanah, closing the door, Mr. Torekler opened the doors, and was advancing apparently into my Zenanah. I was standing within the door, close to my Girl's pillow; I threw up the pillow, took up the Pistol and advanced to the door, and said to Mr. Torekler, "very well, Sir, if you will *not* leave my house" when I had said that, Mr. Torekler pulled out two Pistols from under his cloak, recoiled three or four paces to the other end of the room, cocked and presented and fired one of his Pistols at me, upon seeing him cock his pistol, I drew back, the stop of mine, and snatched it at him*. By the time I had cocked mine his pistol had gone off, when my pistol missed fire, seeing him with this o-

* Vide correction of this witness's evidence D. and E.

ther Pistol, I dropped mine, and retreated and endeavoured to screen myself behind the door of the inner room, while in this situation, Lieutenant Torckler discharged a second pistol at me, the moment I heard what I conceived the ballstrike.

The prisoner objects to the evidence and his Friend delivers the following address.

Mr. President and Gentlemen.---

I must object to any evidence being admitted, which is designed to prove that the one Pistol, or the two Pistols, specified, was, or were, loaded with ball; for they are not laid so to have been in the indictment, and nothing more than is there charged can be proved, because nothing more can be eventually found, than what is actually and plainly averred in the accusation; and it were manifestly illegal, to prove deliberately beyond what can, after all, be judged upon. In deciding on my arguments as to the validity of the charge, the Court gave, as a reason for over-ruling my protest, that it could not be so fettered as a Civil Court, by legal technicalities; but I trust it means, in the receipt of evidence, to be guided by the civil practice, and that the above determination was not intended to apply to any thing beyond the indictment; and therefore that the lawful rules of evidence will be adhered to strictly; for that adherence depends on the Court, though the proper framing of the Charge did not, it having been left to persons who were supposed, from their situation, to have been duly qualified for the correct performance of that important duty. As nothing uncertain is allowed of, or at least ought to be allowed of, in any indictment, therefore, some misssive should be specified, or none can be proved. It would be obviously unmerciful, as well as unjust, to permit an originally vitiated indictment to be amended and supplied, so as to answer all the purposes of a good one, by adduction of evidence to material circumstances not duly and regularly averred; and if a prosecutor might prove one thing unalleged in the indictment, why not another; and, ergo, why any indictment at all? On that loose principle, it would be good merely to aver that A. killed B. and leave the cause, manner, and other essential circumstances, entirely to the evidence: thus giving an unlimited field to the complainant for desultory operations; and leaving the Prisoner at an utter loss to know against what point to direct his defensive exertions. I entreat this Court not to render me a sufferer by the very omissions which should, in strictness of law, have effected the quashing of the entire charge; nor allow the prosecution to benefit proportionally by its own neglectfulness; and agreeably to any of the statutes that relate to this question, it is even more requisite to over what the firearm was loaded with, than to make a specification of the instrument itself. Gentlemen, the evidence referred to cannot as I think, be lawfully received.

The Court is cleared.

The Deputy Judge Advocate General replies to the following purport---
I will cite a case which appears in point---

[Shall wilfully, maliciously, and unlawfully shoot at.] The following case was submitted by Mr. Justice Le Blanc to the Judges in M. T. 1815.

Vide Burn's
Justice Vol.
III 293
and 294.

To shoot at
another with
a pistol load-
ed with Gun-
powder and
wadding on-
ly is an of-
fence within
Stat : 43 G.
S. C. 59.

William Kitchen, Bridgwater Sum. Ass. 1805. M. S. C. C. R. The Prisoner was tried and convicted on an indictment for maliciously shooting at Elizabeth Marlow, with a loaded Pistol with an intent to kill and murder her against the statute. There were other counts in the indictment, some stating the intent to be to do her some grievous bodily harm, and others to disfigure her, and some stating the Pistol to be loaded with Gunpowder only, and others stating it to be loaded with Gunpowder only, and other destructive materials. There was not any direct and positive evidence of the Pistol, which was fired close to the prosecutrix's ear, being loaded with any thing besides Gunpowder and wadding or paper, but there were circumstances from whence to infer, that it was loaded with some other destructive materials, and the evidence of the Surgeon, as to his opinion from the nature of the wound, was positive that it must have been so loaded: it is however very possible, that it might not have been loaded with any thing except powder and paper. The learned Judge directed the Jury that whether the Pistol was loaded with Gunpowder and ball or other destructive materials, or whether it was loaded with Gunpowder and paper only, if the prisoner fired so near to the person of the prosecutrix and in such a direction as that it probably would kill her, or do her some grievous bodily harm, and with intent that it should do so, the case was within the Statute: but His Lordship desired them, if they found him guilty, to tell him whether they were satisfied that the Pistol was loaded with any destructive materials besides Gunpowder and paper or not. The Jury found the prisoner guilty, and said they were satisfied that the Pistol was loaded with some destructive material besides powder and wadding.

Application was afterwards made to the Crown for mercy on the ground that the Pistol was not loaded with any thing but powder and paper, and supposing that to be the fact, the question submitted to the Judges was, whether the direction to the Jury was right.---On the 16th November 1805, all the judges (except Heath J. who was absent from illness) were of opinion that the prisoner was properly convicted and the direction right."

The Court is of opinion that the Prosecutor be allowed to prove the firing of a ball.

The Court is opened and the decision read---

Lieutenant Goldney is re-called.

Examination continued by the Deputy Judge Advocate General---

Question.---Continue your narrative, if you please, I will read a few lines to remind you where you were?

Answer.---When I heard what I conceived to be the ball, strike, I immediately rushed on Lieutenant Torckler, and threw him down, he fell upon the couch, and while I was holding him down, several people came, and one fellow, seized me, in a way which made me suppose he was one of Lieutenant Torckler's people, upon which I became alarmed, and extricated myself violently from this

man, and immediately made my escape and went over to Major Holbrow, Commanding the Regiment, and claimed his protection.

I wish to observe to the Court, that during the actual firing and the scuffle, I was alarmed and agitated, and weak from indisposition and though I have taken my Oath to that Statement there may have been minor occurrences which I cannot recollect.

Question---When you went into the room where Lieutenant Torckler was, was he standing with his face or back to you ?

Answer---I could not see his face.

Question---What prevented you ?

Answer---He stood in some degree---his face was turned from me.

Question---Had he a hat on or was it off ?

Answer---I cannot say.

Question---You said that he began to address you---what to the best of your belief and recollection did he say ?

Answer---To the best of my recollection he said, " I am come Sir --", but I cannot state any other syllable.

Question---In what tone of voice did he address you ?

Answer---In a hurried and abrupt tone.

Question---Was any person in the room where you two were ?

Answer---I can swear to one, the bearer, being there---and there were servants in the Verandah.

Question---Do you know that bearer's name ?

Answer---I cannot state which bearer it was---I think it was Sookah.

Question. Was it the one who gave you intimation of his arrival ?

Answer. I cannot say, for he spoke through a closed door, I did not see him.

Question. Did you see his hands before he produced the note you have mentioned ?

Answer. No.

Question. Where were they ?

Answer. They appeared to be in his side pockets or down his side. They were under his Cloak.

Question. Do you know whether in producing it he used both hands or but one.

Answer. To the best of my belief only one.

Question. Previously to saying, " If you do not acknowledge that I have offered you the satisfaction of an Officer and a Gentleman." had he done so ?

Answer. He had sent that letter of July 19; which I don't consider that of a Gentleman

Question. Had he, on that Morning, before offering you that note, asked you to give him or receive from him, the satisfaction of a Gentleman ?

Answer. I have no recollection, to the best of my belief he had not.

Question. In what manner did you *refuse* to take the note tendered to you ?

Answer. I told him to be off out of my House, and that I would have nothing to do with him.

Question. In what tone of voice was his observation made ?

Answer. I have some difficulty in answering minute points but certainly not in a conciliatory tone.

Question. In what way did he endeavour to stop you when returning to the room you mentioned ; In an entreating manner, or by force ?

Answer. He took hold of my arm, that is all I can recollect.

Question. Again I must ask you to the best of your belief, as you are on your oath, and the prisoner on trial for his life, you must say what you believed at the time of his doing so, his manner of taking you by the arm to be entreating or forcible.

Answer. Forcible is the impression on my mind.

Question. You said you *shook* him off ; did it require any degree of force to extricate yourself from his grasp ?

Answer. No it was done with a jerk.

Question. Had you any particular reason for retreating to your room beside the one of discontinuing the interview ?

Answer. I wished to have nothing to do with Lieutenant Torckler but from his wild countenance and hurried manner, I apprehended violence. I was actuated by both motives.

Question. Do the doors of the room into which you retreated, open into it or the one in which he was ?

Answer. I am certain in my own mind that they open outwards, that is into the room where he was.

Question. Then in going in, you pulled the doors after you ?

Answer. Exactly.

Question. Close, or did you leave them ajar ?

Answer. I closed them hastily as I went in, I cannot state whether they were closed.

Question. From the direction in which you first saw Lieutenant Torcklar after you had gone in, and closed them, could you have seen him unless he had opened them.

Answer. I think not, I believe not.

Question. Did you know or apprehend before you saw him that he was following you into that room ?

Answer. I did not apprehend that he would presume to follow me into my Zenanah.

Question. Did you take the pistol from under the Pillow before you again saw him advancing ?

Answer. No.

Question. What was the reason for your doing so ?

Answer. I began to perceive that it was difficult to say who was to leave the house, myself or Lieutenant Torekler, and having carried my forbearance as far as any man of spirit could do, I was resolved to defend my own private apartments from intrusion.

Question. Do you swear positively that you did not take your Pistol up before you found that intrusion was likely, or had been commenced ?

Answer. I do swear that.

Question. Had you by the solemn oath you have taken in any manner returned from the pillow where it was towards the door which you had closed, before he commenced to enter ?

Answer. I do swear that.

Question. Do you affirm that his pistols on both occasions were levelled at you ?

Answer. I do ; stay ; —they were levelled in my direction ; I can't swear to the intent ; —they appeared to be levelled at me. I had every reason to believe that they were levelled.

Question. How far from you was he when discharging the first ?

Answer. About five or six paces.

Question. And the second ?

Answer. Our position was much the same only that I was retiring behind the door.

Question. Before snapping your pistol that morning did you prime it ?

Answer. No.

Question. How many days do you believe had elapsed since you had loaded it ?

Answer. From eight to twelve days.

Question. Did you snap it more than once ?

Answer. No.

Listen to this question if you please, and you, and the Court, I hope will excuse the terms in which it is worded.

Question. Do you affirm by your oath, and by your Hopes of Salvation, that the assertion, tho' on Oath, of any person that you snapped it three times, is an arrant falsehood, and a down-right wicked lie ?

Answer. I do believe it to be so.

Question. The last question I shall put to you for the present is whether you believe all the material circumstances of this transaction have been detailed ?

Answer. I do to the best of my belief.

Lientenant Goldney cross examined by the Prisoner.

Question. Do you firmly and undoubtingly believe in God, in Heaven, and Hell, or a future state of rewards and punishments ?

Answer. I do.

Question. Have you not expressed your doubts of all or any of these points to any one ?

Answer. I have perhaps frequently spoken on these subjects as many will do without proper reverence, but I trust I have a proper way of thinking, as I have been brought up religiously.

Prisoner. Answer the question if you please.

Question. Have you not expressed your doubts of all or any of these points to any one ?

Answer. I fear that I have.

Question. You admit then that you have.

Answer. I may have done so, I refer to my former answer.

Question. And also regarding the Holy Gospels by which you have been sworn ?

The Deputy Judge Advocate objects to this question.

The Court is cleared and closed.

D. J. A. G. " The proper mode of examining a Witness, for the purpose of trying his competency on this ground, is not to question him as to his particular opinions, [as, whether he believes in Jesus Christ,] but to enquire whether he believes in the existence of a God and a future state. In a case before Mr Justice Buller, where a witness, who had been sworn on the Gospels, was asked whether he believed in the Gospels on which he had been sworn, the question was objected to, and is said to have been overruled by the Court. 1 Phill. Evidence 25, and 1 Chitt. criminal. L 592.

The question is overruled.

The Court is opened and the decision read.

The Prisoner, Mr. President and Gentlemen.

I bow to your decision, as I have hitherto done ; but if I had been allowed to ask the question, I would have proved the fact whatever he might have answered.

Cross-examination continued by the prisoner.

Question. You do not think courtesy due from you to an officer, in a public business, or a demi public one, because you are not on good private terms with him?

Answer. I know that Lieutenant Torckler, had been warned not to write unless authorized by his Commanding Officer, upon occasion of a correspondence with Lieutenant Salter, I therefore considered the correspondence wholly private.

Question. Answer the question?

Answer. As Lieutenant Torckler had treated me with no courtesy I had none for him.

Question. Had I been warned not to write to you?

Answer. I have no means of knowing.

Question. Did you consider yourself included in the prohibition you have mentioned?

Answer. As Colonel Stewart, gave me to understand that he had given general instructions, to Lieutenant Torckler, yes.

Question. You said just now you had no means of knowing that I was told not to write to you, and you have just given a sufficient means of knowing it; reconcile this?

Answer. Not to me specifically, but as I said before I considered it a general prohibition.

Question. The reason you have given for an uncourteous answer is that as I had been prohibited, generally, from addressing Officers direct on public subjects, you chose to consider my letter a private one. Now as your reason hinges on the right comprehension of the terms we have employed, will you say distinctly whether you admit that a general inclusion embraces a particular one; and the inclusion of several, that of each of them?

Answer. I am not here to discuss metaphysical subjects. It is contrary to the usage of the service for a staff Officer to write privately on public subjects.

Question. If three or more persons are included in a prohibition, is not each in your opinion included?

Answer. I should imagine so.

Question. Then we draw to the original point; and you admit that you knew I was prohibited from addressing you direct, and that your authority was the Commanding Officer?

Answer. I have no means of knowing that he was ordered specifically not to address me direct, but I considered the prohibition to be general.

Question. At all events you will do us the favor to admit that you said you had no means of knowing whether I was prohibited from writing to you or not; and also that I was prohibited from writing to several, of whom you were one. Does your reason for considering my letter a private one still hold good, under these circumstances?

Answer. When I first stated that Lieutenant Torckler had been prohibited from writing, I quoted the instance of Lieutenant Salter's correspondence, but I was subsequently asked; whether he had also been prohibited from writing to me, I said I had no means of knowing, as I had not. Had I not conceived the question to embrace two distinct periods I should perhaps have answered differently. Lieutenant Torckler might also for ought I know have been cautioned particularly regarding me.

Question. Answer it; then, as you say you perhaps would, supposing it to embrace two distinct periods, and mention the distance between these periods, and then, I hope we shall get your final reason?

Answer. When I have two distinct periods mentioned, I shall be able to answer the question, but I cannot answer such questions as these, put a distinct question and I will answer.

Question. To what two periods, did you allude?

Answer. When I was asked that question I considered that I was to be asked whether Lieutenant Torckler, had two distinct cautions regarding addressing Officer's.

Question. What reason had you for considering that correspondence private?

Answer. Because I considered the prohibition on the occasion of Lieutenant Salter's Correspondence was intended as a general rule for Lieutenant Torckler's guidance.

Question. You swear you do not recollect whether the address of my letter was in a public form or not?

Answer. I do.

Question. Was not my letter regarding the Tindall publicly addressed; and was it uncourtously worded?

Answer. I cannot say at this moment whether it was, from the terms Lieutenant Torckler had been on with me I think it was vexatious and uncourtous.

Question. Did you never write me private notes on public business, about or after the period alluded to?

Answer. I have no recollection that I have done so---besides the reply to that note and others arising from it.

Question. Your opinion, I think, is that I should not have made a public reference on that occasion; but have settled it in a private manner; what interpretation are we to put on the private mode alluded to?

Answer. I decline answering that question.

The question is here repeated.

Answer. To fight a Duel.

Question. Then do you think that my publicly referring a matter, which I might have made the grounds of a Duel with you, shewed any malicious intent to injure your person in any way at that time?

Answer. I am no judge of his motives whether of injuring my person or preserving his own.

Question. You think then that I ran as much risk, in a Duel, as you did, on an average calculation?

Answer. I am not aware of who is the best shot.

Question. When I subsequently offered to make up all quarrels with you, you said that an alienation, which was the mildest term you could use, of three years standing, could not be effaced in five minutes; what was the proper term to use, in description of your own feelings all that time, if alienation was not strong enough; would enmity do?

Answer. I decline answering that question.

The Court is cleared and closed.

The Court decides that the witness shall not be pressed to answer that question.

The Court is opened and the decision read Lieutenant Goldney is recalled.

Question. I am of opinion that your note in reply to my conciliatory one was very irritating: and I ask you whether I did not subsequently call on you, in order to be reconciled.

Answer. Yes.

Question. You shook hands;---did you do so readily and cordially?

Answer. Not cordially, because it was contrary to my declared opinions which he had in his pocket.

Question. Then the alienation was not, on your side effaced, by that outward sign of amity?

Answer. I should have preferred waiting till I saw whether Lieut Torckler's motives were such as did him credit, before I made it up with him, but I can solemnly declare that had he acted up to his professions of that date, I would have fulfilled most fully every thing I said in my letter to him.

Question. You made me, on that occasion, an unconditional promise that you would return my visit when you rejoined the Corps;---did you redeem that pledge?

Answer. I deny having made any unconditional promise of the sort.

Question. Was your verbal promise to return my visit clogged with any condition?

Answer. I have stated the substance of what passed. Lieut. Torckler knew my sentiments, and on the faith of them came to my tent, and when he came and humbled himself before me, it was not in my nature to refuse him my hand.

Question. As you have said your nature would not let you refuse your hand, the want of cordiality in the offer of it was against your nature ?

Answer. It arose from a distrust of Lieutenant Torckler's motives which I have every reason to distrust.

Question. Did you in any way intimate when you gave your hand to me, that it was not cordially done, or what did you leave me to infer ?

Answer. When a man is obliged to solicit a Brother Officer to take his hand, I think he may easily judge that it was not very cordially done.

Question. You have sworn that I ordered some trees of yours to be cut down [which caused a reference against me] on what authority did you make that assertion, on your oath ?

Answer. I have not sworn that Lieutenant Torckler did give orders to cut my trees, to the best of my recollection I said I was obliged to apply to the Station Staff Officer, to know whether he had authority to do so.

The Court at 4 P. M. adjourns till to-morrow at 11 o'Clock in the forenoon.

3RD DAY'S PROCEEDINGS.

Cawnpore Saturday 21st November, 1829.

The court assembles this Morning at eleven o'Clock pursuant to the adjournment of yesterday.

The President Members Deputy Judge Advocate General and Interpreter present.

Lieutenant Torckler appears in Court.

Prisoner. Mr. President and Gentlemen ;

Before resuming the cross-examination of the present witness, I request your kind permission to say a few words concerning it, which I trust will have the effect of giving you a sufficient insight into my views, to induce you to grant the full privilege that all Courts of Law (by whose rules of evidence you are entirely guided) accord to cross examining counsel. It appeared to me that the Court was occasionally disposed to object to certain questions, because it doubted the utility, or did not perceive the drift, of them ; and as I was loath to give trouble that I could in any way avoid, I more than once submitted to the wish, or what I imagined to be the wish, of the Court, and gave up examinations, which might have been made most beneficial to my case. The points touched upon yesterday, however, were comparatively unimportant in regard to what have yet to be investigated ; and I am anxious, as I am certain you all are, that I should not be in any way more fettered, than the practice of Civil Courts demand that I should be, in my cross examination of Lieutenant Goldney. The Court can hardly have been blind to the extreme unwillingness with which he answered nearly all my questions, compared to the readiness of his replies to the examination of the

Pro centor ; and it cannot be doubted that an unwilling Witness may be pressed almost to a cross examination, even by the side which called him, and still more may he be pressed in a cross examination by the side he is called against. The Judge Advocate himself held this opinion before this Court, in the case of Ensign Pemberton, on the trial of Lieutenant McGrath, and it is a doctrine which all writers upon evidence admit. I may frequently put a question of which the Court may not at once perceive the intention ; but remember, Gentlemen, that I am fully acquainted with my own case, of which you are as yet, necessarily, in a great measure ignorant ; and that I may have a very beneficial object in view by a question, though to you that object can only be gradually developed. If, on putting a question, which may not *per se* be of much importance, but which is introductory to a series that, conjointly, will be so, I should have (before being allowed to put it) to lay open my views in order to convince the Court of its necessity, I should be letting the witness and the prosector, equally with you into the nature of those views, and thus be made to neutralize my best plans of ascertaining malice, and detecting falsehood. " When the examination in Chief (says Chitty) of the witness is concluded, the Prisoner or his counsel has power to cross examine him as to every part of his testimony, and if he is not assisted by an Advocate, it is the duty of the Court to ask any questions which they think may tend to his benefit. Leading questions are here admitted with safety, because the witness is supposed to be more favorable to the party calling him, than to that against which he is brought forward to swear. And in order to try his credit, facts may be supposed, apparently connected with the cause, which have no real existence except in the imagination of the counsel." Now this last degree of latitude I have never allowed myself ; but I nevertheless trust that the Court will not save a witness, like this, from being pressed to the utmost to try his veracity. Remember he is the principal witness against me ; that my life mainly depends on the credit which may be given to what he shall depose ; that he has not evinced the least desire to spare me, but has taken opportunities of throwing in condemnatory and contemptuous expressions in cases where the question might have been perfectly answered, without any such extraneousness, and finally, that the gist of the whole case is the malice against him which the charge imputes to me. " Leading questions [I quote Phillips on evidence] are admitted in the cross examination of a witness, where much larger powers are given, to counsel than in the original examination. Witnesses upon cross examination may be led immediately to the point, on which their answers are required. If they betray a zeal against the cross examining party or show an unwillingness to speak fairly and impartially, they may be questioned with minuteness, as to particular facts, or even particular expressions. " There can be no danger in leading too much, where the witness is obstinately determined not to follow." The Court will be so good as to bear in mind that the Prosecutor's examination had the fullest scope, and that I did not object to any of his questions ; that the only one I had thought of objecting to, was on a subject his witness could only have known from hearsay and that although the Prosector turned and said even somewhat tartly, " suppose I prove that he had good ground of knowledge what will the Prisoner say to that," yet he never did prove, nor attempt to prove, those grounds,

and still he put the question. I could have said a great deal against it, could my adviser have argued the point in a direct address; but the Prosecutor would probably have foregone the small triumph his unaccepted challenge gave him over me, had he reflected on the instant, at how great a disadvantage a prompted and an inexperienced man, like me, stands in a legal dispute with one who has made the subject his long and serious study. Perhaps I ought not yet to expect him to lay aside his character of my Prosecutor, so much as he probably will in the course of the defence; but if he will only divest himself of it for five minutes, I will defy him to assure the court, as a Judge Advocate and, a lawyer, and one acquainted with the law and the practice of cross examinations, that I have exceeded the proper limits, in what has yet passed of mine. I did not object to his questions, because my sole anxiety was for the fullest scope to be given to the scrutiny; being well persuaded that the more there is disclosed of it, the better for my self; and if he feels that his witness has spoken nothing but truth, and is convinced that he will not speak any thing but the truth, I am surprised that he should so dread the test of a cross examination (I know I hope all my witnesses may be most rigorously tried) as to make him object to, and try to shield his principal evidence from the effects of questions which really could not be injurious to any one who had no manner of sinister design. A parent could not be more solicitous about, nor more trembling alive to, the safety of a favourite child, in a critical situation, than the prosecutor appears to be for that of his principal Witness; and yet the fear must be imaginary, where, nothing but the truth and the whole truth has been, or is meant to be spoken, on the subject. The very writing down of the evidence gives the witness abundant time to guard himself in his replies; and if that be not sufficient to save him from contradiction what an exhibition would he make in a Court of Civil Law, exposed as he would there be, to an able and, literally, a *viva voce* scrutiny! Gentlemen, this reflection it was which made me anxious to be tried by the Supreme Court. I had nought to fear, and every thing to hope, from the completest enquiry, and there I knew such enquiry, would be made. This Court has certainly [and most gratefully do I acknowledge that it has] allowed me all the assistance which its rules enable it to grant; but that is very trifling? indeed, compared to the aid of shrewd and intelligent barristers; and so the witness and the Prosecutor would have abundantly formed the case, had my plea to your jurisdiction been somewhat more successful. Gentlemen, pardon this occupation of your valuable time. I was anxious to show you the necessity for my having all possible scope in my cross examination, which with your permission I shall now resume.

DEPUTY JUDGE ADVOCATE GENERAL.

It is usual, when objections are made to an examination, for the party examining, to show the connection of a question with the subject, on which it is to bear.

My witness has spoken the truth, I am convinced that he has spoken the truth---and will speak nothing but the truth---Sit his testimony as much as you please---I dread no scrutiny---I am afraid of no perjury---no perjury---no cross-examination will induce him to swerve from that which is literally and substantially correct,---and unless some thing be shown connecting the questions al-

ready asked with this charge, and this offence, *I do* as a Judge Advocate, and as a Lawyer, and one who has studied something of the subject, affirm that those questions do not bear any analogy or reference to this inquiry, and shall as I have hitherto done, continue to object.

Lieutenant Goldney is recalled into Court and reminded of his oath.

Question. In explanation of one of your answers yesterday, I wish you to say to what part of your conduct you really believed I referred, when, on calling upon you, I said I had been misled, or mis-informed, regarding it ; do you mean to swear you thought I alluded to no part of your conduct, excepting that of May 1828, and what appertained to it.

Answer. That was the impression on my mind.

Question. As it is not probable I should describe myself as mis-informed and misled on a dispute carried on in writing, is there no other part of your conduct to which it occurred to you I most likely alluded ?

Answer. It did not occur to me at the moment, nor does it occur to me now.

Question. I wish also to know if I am to understand you to say that because an Officer has to solicit forgiveness, he should therefore judge it to be only seemingly, but not cordially, bestowed ?

Answer. I never said it was only seemingly bestowed, there is a difference between a want of cordiality and deceitfulness.

Question. Then because one has to solicit forgiveness, you say therefore he might judge it not cordially granted ?

Answer. He might judge whether it was cordially done or not ; he might judge whether it would be cordially received.

Question. Now touching the cutting down of the trees ;---have you sworn, or not, that I ordered your trees to be cut down ?

Answer. I mentioned that I was obliged to apply to the Station Staff to know whether he had authority to cut down trees.

The question is repeated.

Answer. I have implied in my answer that he had desired them to be cut, and have reason to believe that he did so because it has remained uncontradicted for a year and a half, to the best of my belief.

Question. Then I am to consider it only as implied, and not positively sworn to in your evidence ?

Answer. My answer is before the Court, I am not accustomed to Courts Martial.

Question. Your reference to the Station Staff obtained the settlement of the point, did it not ?

Answer. To my satisfaction it did.

Question. Did you not on a subsequent occasion, bring the matter up again, although it had been concluded ?

Answer. I mentioned it in a cursory manner to show that I had received no courtesy from Lieutenant Torckler and therefore that I owed him none.

Question. But when you referred to the Station Staff, and afterwards brought forward the subject again, had you any proof that I gave any such order, or on what proof did you so adhere to the complaint ?

Answer. I was told by my gardener that a tree of mine, which overhung the road, he had been told to cut or lop by Lieutenant Torckler. I ascertained from the proper authority that I was not obliged to have it cut, but when I wanted to bring forward a proof of Lieutenant Torckler's want of courtesy to me having no reason to disbelieve the gardener's statement, I assumed it to be the fact and stated it in my public letter.

Question. And you call a report of your gardener, of which you seem to have taken no pains to learn the accuracy, a proof of my want of courtesy, and accordingly assumed it as a fact against me in a public letter ?

Answer. I have so stated in my last answer, I had no reason to disbelieve it

Question. To come now to your return to the Corps in June last :—you have said you found me then on good terms with only two of our brother Officers, to the best of your belief ; will you swear I was not on good terms with three ?

Answer. Upon my word I will not.

Question. With four ?

Answer. I know nothing of Lieutenant Torckler's disputes sufficiently to swear to them ; I speak from the impression in my mind.

Question. You stated that to the best of your belief I was not on terms with more than two, whom you named ; when a witness is allowed to speak to his belief, he is required to give some probable and fair grounds for it ; such a state of things, as my quarrelling with almost every Officer in my Corps, is calculated if true to make much in favor of the Prosecutor's assertions of malice and depravity of heart : will you therefore take on yourself to say that I was not on terms with six or seven of the Officers at the time alluded to ?

Answer. On my return to Sultanpoor I was given to understand by all my oldest friends in the Regiment, that Lieutenant Torckler was not on terms with more than one, or two, as I was not implicated at that time in any recent dispute with Lieutenant Torckler, and wished to avoid him altogether, I avoided in a great measure making particular inquiry about him and his concerns.

Question. Name some of those individuals ?

Answer. Captain Caley, Major Holbrow, Captain Wilton, subsequently, Lieutenant Salter, Lieutenant Macdonald.

Question. Was it only, then, on an ex parte statement against me, that you resolved not to redeem your pledge [conditional or unconditional] of paying me a vi-it ?

Answer I knew that if I gave a tiffin party and asked certain Officers to it, that other Officers would have declined meeting them on account of Lieutenant Torckler's correspondence, and that I considered as disturbing the harmony of the Corps.

Question I now come to the point of the duels that have been referred to; and the Court will be so good as to guide this examination, because we all know that in regard to such felonies, there is a code of honour, which differs from the code of law. Do you not think then that I had as much right to demand satisfaction from you, and the four other officers mentioned, as you had to do so from Lieutenant Wilcox, for any other presumed insult?

Answer. I consider that an Officer must come with a good character when he comes to demand satisfaction from one who has not blemished his own.

Question. And what part of my character debarred me from the satisfaction I sought?

Answer I disapproved of Lieutenant Torckler's conduct altogether myself, particularly in his correspondence about that time pending; without certain papers which are not before me, I cannot speak particularly.

The Prisoner then appeals to the Court for these papers which the Judge Advocate had refused to deliver to him.

Deputy Judge Advocate General. I object to the production of these papers by the express direction of His Excellency the Commander-in Chief, they are references on parts of Lieutenant Torckler's conduct as an Officer, made against him by his Commanding Officer. Lieutenant Goldsby was not at the Station at the time, and is not in any way concerned in that correspondence and I do assert most confidently that there is not in the whole correspondence a letter that bears any analogy or reference to the present inquiry. His Excellency the Commander-in Chief has been pleased to direct that these papers be transmitted to me, as it was advisable that I should be acquainted with and in possession of every paper or document having reference to Lieutenant Torckler's conduct, for the last eighteen months, though unconnected with this investigation, but at the same time His Excellency enjoined me not to deliver these letters, unless I myself considered them to be absolutely requisite for Lieutenant Torckler's defence. I do not, and I therefore protest against his calling for them, I do not use the word protest as against any opinion or decision of the Court, but only as the strongest protest I can use, expressive of my own opinion of their inadmissibility. I would with confidence rest my reputation as a Judge Advocate on the opinion that these letters are not legal evidence. Nevertheless should the Court order it, I will lay the correspondence before it.

Prisoner. The Court will understand that my desire is to have the facts stated particularly, by the allusion to which the witness has so grossly aspersed my character. For the witness either knows, or does not know, these facts. If he does, he is bound to tell them all; but if he does not, after what he has sworn, this honourable Court will draw the proper inference. If the Judge Advocate cannot

produce the correspondence, and if it does not contain the facts referred to, let the witness reconcile his audacious observations on my character.

The Court is cleared.

No 1790.

Adjutant Generals Office, Presidency of Fort William 6th October 1849.

Sir,

I have the honor to acknowledge the receipt of your letters of the 19th. and 21st Ultimo, enclosing applications from Lieutenant Torckler, of the 4th Native Infantry, for certain documents which he considers likely to be required by him on his defence and though the Commander-in-Chief has been pleased to cause it to be intimated to you, in my letter of yesterday's date, that only the papers immediately connected with the Charge on which Lieutenant Torckler is to be arraigned are to be furnished to him, His Excellency, considering it necessary that all the documents specified should be in your possession desires me to transmit to you the originals, as shewn in the annexed list, which are not to be furnished to Lieutenant Torckler, unless considered by you to be absolutely requisite for his defence; in which case, you will consider it your duty to recommend to the Court, that he be confined to the refutation of the specific charge on which he is arraigned, and prevented from entering into a detail of circumstances unconnected with the occurrence which has led to his trial.

2nd. The papers specified in excess to those now sent are deposited with the Staff Officers at the different Station where they were sent for record, to whom you will apply for such as may be required.

To

LIEUT. PALMER,
Dy Judge Advocate Genl., Cawnpoor. }

I have &c ,

C. FAGAN,

Adjutant Genl. of the Army.

The Court agrees to receive the papers.

The Court is opened,---and decision read.

Lieutenant Goldney is recalled.

D J. A. G. Lieutenant Goldney.---Have you ever seen the Correspondence ?

Answer I have, the greater part.

Question by Prisoner. State what parts of that which you have seen, are particularly alluded to in your former answer ? [which are now read]

Answer His accusing the Commanding Officer of artfully and maliciously withholding certain documents---his accusing the Commanding Officer or others, of encouraging gaming in which Lieutenant Torckler had taken a part, & I conceived because he lost, he brought this forward publicly. There was an accusation against Lieutenant Salter to the best of my recollection founded upon the authority of an Officer Lieutenant Wilson, who denied his being the authority---There was also an allusion which I considered most ungentlemanly and unfeeling to the late Mrs. Holbrow the Majors wife --and the tenor of the whole Correspondence I considered it degrading to an Officer to write---nor was I singular in my opinion,

THE DEPUTY JUDGE ADVOCATE GENERAL, READS---

Extract of a letter from Lieutenant Torckler to Captain Smalpage Major of Brigade Lucknow, dated the 27th June, 1829.

4th. Par : In explanation of whatever part of my conduct may appear to have been wanting in respect to Major Holbrow Commanding the Regiment, I have to state, for the information of His Excellency the Commander in Chief, that independent of this and other acts of injustice and oppression which I have experienced and am prepared to substantiate on my trial, I have witnessed instances of low and disgustingly indecent familiarity on the part of Major Holbrow, in public with junior subalterns of the Regiment, whilst still in mourning for his wife whom he had scarcely buried six Months ; and that, on one occasion, at the Card Table in the Mess room, Major Holbrow, having united in gambling, contrary to the orders of the Commander in Chief, to an extent by which I was a considerable sufferer, and himself, I believe, one of the principal winners, did permit a Captain of the Regiment, to address him in a violent tone and manner, throwing down the cards, with the following insulting terms :---“ Then I'll be damned Major Holbrow, If I'll play any longer,” or words to that effect, without taking any notice of the matter that I am aware of, or that, on inquiry I have been able to ascertain from the party who witnessed the transaction as well as myself.

Question. Are there any other parts of the Correspondence, to which you allude, as connected with Mrs. Holbrow's name ?

Answer. I am not aware of any.

Question. You have sworn to the words artfully, and maliciously, as used by me. I suppose you can tell where they are to be found ?

Answer. I believe them to be contained in a letter in the beginning of Lieutenant Torckler's Correspondence ?

Read : Extract of a letter from Lieutenant Torckler to Captain Smalpage, Major of Brigade, Lucknow, dated 16th of April 1829.

Par : 3rd. I beg most respectfully to submit to Brigadier Patton, C. B., Commanding in Oudh, that if, for erroneously giving my Junior Officer any orders on Parade, [as admitted in the annexed copy of a letter to my address] I merited this harsh treatment, the conduct of Lieutenant Salter himself in making me a reply without any authority, deserved notice ; as well as his wilful and obviously designed, neglect of duty in not communicating to me the existence of the order which it seems Major Holbrow, and himself, as Station Staff, [having the advantage of constant access to the Orderly Books] had discovered since the preceding field day, especially as by the standing Orders, the Adjutant is held responsible for the Circulation of orders of every description, in consequence of which I was undeservedly exposed to public mortification and censure. I leave it to the Brigadier Commanding to draw his own inference, but the impression on my mind is that the order was artfully and maliciously concealed from my knowledge with the sole motive of wounding my feelings in this pointed and public manner, and that the result had been previously contemplated.

Question. You have given as a part of your reason for not calling on me, that you could not have invited me to a certain tiffin party ; but as I was in arrest,

how could that reason have swayed you ?

The Deputy Judge Advocate General objects to the question, as the witness had said nothing of the sort.

Question rejected.

Question. Is it your opinion that no Officer can select a second for himself, in a Duel with you, because you have not as good an opinion of that person, as he has who chooses him ?

Answer. A man is not entitled to select a man for his second in a Duel with me, if I have reason to fear that my fighting that duel may be made at a future time, a means of bringing me under the disapprobation of my Military superiors by that man.

Question. Then when you first heard from Ensign Becher, that I was to be concerned on Lieutenant Wilcox's part, did you then, or not till afterwards, object to me ?

Answer. I anticipated his being the second, and had expressed myself apprehensive of some such consequences, as I have detailed in my former answer.

Question. Then you objected before the communication Ensign Becher made to you---Did you say so, accordingly, to Ensign Becher, or what did you say to him ?

Answer. I cannot say that I told Ensign Becher that, but I sent for Lieutenant Salter immediately, and in Ensign Becher's presence told him that we could not object as we had intended, because being absolutely challenged at that time by Lieutenant Wilcox, I thought I must accept it at all hazards--Ensign Becher in communicating the message to me, said that I could not be allowed to have Lieutenant Wilkie, as my second, because Lieutenant Torekler objected to it, not being on terms with Lieutenant Wilkie.

Question. Though you had anticipated the event, and prepared your objection, you did not avow it on the first confirmation of your surmises ; because the challenge had then been given, and at all hazards you thought you must accept it ;---how long afterwards was it ere you once more changed your mind on the subject ?

Answer. I was preparing to go to the place of meeting very shortly, probably about half an hour, after receiving the intimation, when Lieutenant Salter came, and told me to make use of the opinion of four of my Brother Officers, that Lieutenant Torekler ought not to be the second. I decided upon acting upon that opinion and did so.

Question. I thought you had sent for Lieutenant Salter to tell him, you meant not to object to me ; was the present a second visit of his to you, with the message you mention ?

Answer. I sent for Lieutenant Salter to consult with him, as Ensign Becher was so young an Officer. Lieutenant Salter left me afterwards as I considered chiefly, for the purpose of procuring a pair of Pistols of Lieutenant Oldfield, some little delay occurred, and on his return he told me what I have stated.

Question. Did that little delay mean another half hour ?

Answer. It might have been a quarter, or 20 minutes, or more.

Question. So that nearly a full hour elapsed on the whole ?

Answer. I cannot speak as to time, I was not at my own house when I received the message and I had to send, I think, to my own house for my Buggy or a Horse.

Question. You have already spoken to about 50 minutes ; we don't want to stand on a few minutes, one way or the other ; will you fix 50 minutes as nearly the period ?

Answer. No.

Question. You have sworn to two new reasons for your conduct ; now I ask you was not the only reason expressed by yourself or others in your behalf at the time, for the insult offered me on the ground, that I made a public reference a year and a half, or thereabout, before, when I might have settled the dispute in a private way [by which private way you have said you meant a duel] although that dispute had long been duly settled, and we had shaken hands in what I thought and felt to be cordial amity ?

Answer. That was the reason Ensign Becher was desired to communicate.

Question. Then did the two new reasons exist in your mind *then*, although they were not communicated to me ?

Answer. I was certainly in some degree influenced by them, and in consequence wished to avoid coming into contact with Lieutenant Torekler. I do not know whether they were communicated to Lieutenant Torekler, I was not within hearing of Ensign Becher's conference with him.

Question. Was Ensign Becher authorized or expected, to communicate them ?

Answer. Not to my knowledge.

Question. Because I was exposed, by rejection as a second, on a public ground, for a reason not in itself sufficient, as I think, but yet the only reason assigned viz : a long made up, and cancelled, dispute ; was my demand of satisfaction for the insult, or threat to post you if refused, to be deemed an ungentlemanly proceeding ?

Answer. The language namely in the letter of the 19th July was not that of a gentleman.

Question. Or sufficient to put you in fear of your life, from a night attack ?

Answer. I considered the Act to be that of an insane person, and certainly indicative of spite and fury.

Question. You mean to swear you think a demand of satisfaction, under the stated circumstances, an act of insanity, and consequently that I was then insane ?

Answer. I have made use of a common expression, perhaps outrageous would be better.

Question. Is fury not evinced rather by sudden violence, than by mor deliberate conduct; or is that also a misapplied term?

Answer. I dont consider it a misapplied term. I can't define the word,

Question. Did I, on the ground, do any furious action?

Answer. I can't say, I had no communication with him.

Question. When a witness puts one exaggeratory word on the back of another, in speaking of a person he avows a dislike to, it is fit that his meaning should be distinctly ascertained, with reference to his manifest purpose to criminate on the occasion; now will you tell me whether spite is the word you mean to apply to a fair offer of gentlemanly satisfaction?

Answer. I can't have words put into my mouth by the Prisoner.

Question repeated?

Answer. No.

Question. You will refer now to the period when you procured a Pistol, and kept it regularly loaded, with a view to injure me if I entered your house at night. This purpose I infer from all your evidence on the subject, but you have now an opportunity of disclaiming it if you please. I think you said to the effect that fear of danger on your part, from my malice and desperation, caused you to sleep with arms, as stated?

Answer. That is what I stated.

Question. Did you not on a subsequent occasion of fear for your life, swear what is called the peace against me?

Answer. I did.

Question. You knew, then, the proper legal mode of protecting your person from apprehended violence; why did you not resort to it on the first occasion of fear, instead of adopting a plan less certain to yourself, but more certain to kill, or grievously injure me in some other bodily way?

Answer. My previous apprehension I had no proof of, I could not substantiate it, I armed myself for my own private satisfaction.

Question. Then you had not any well grounded apprehension on the occasion, from my desperation?

Answer. My apprehension is pretty well justified since my apprehension was sufficient to make me load my Pistol for my own protection.

Question. You have stated in your chief examination that a knowledge of my malicious nature and desperate state, and my reported connexion with fellows in a village, made you fear violence from me; you recently stated that you had no proof for your suspicions; and now you say you had sufficient grounds to arm for self-protection against me; please to make all this clear, in one answer, to the Court, and me?

Answer. I was guided by my opinion of the matter, as a whole, as described in my examination in chief.

Question. Do you positively swear that during the time in question, you knew not where your pistol was in the day time.

Answer. I swear I did not.

Question. Then it is presumed by me, that in the day time you were not in the described fear of me?

Answer. I consider myself perfectly able to defend myself in the day time without any arms of the sort, besides I had given orders that he should not be admitted, which could only be carried into effect during the day.

Question. As you so considered yourself, did you at all attempt to shield yourself, without having recourse to fire arms, when I did call on you?

Answer. On that morning, I endeavoured to get Lieutenant Torekler out of the house, without violence on either side. I felt weak and unwell, and unequal to a struggle that morning, but hoped by showing arms to induce him to leave the house.

Question. I thought you had ordered your servants to turn me out---was that an intention of violence (now disclaimed by you) or not?

The Deputy Judge Advocate General objects to the question as the witness has not said that he ordered this to be done.

The question is rejected.

Question. And yet you were able to throw me, a strong and healthy man, down in a struggle, though you felt extremely weak from illness.

Answer. I threw him down. I don't know whether he is strong and healthy.

Question. Did you not say at the Mess that I was the stronger man

Answer. I can't say.

Question. You have stated, however, that after a certain lapse of time, your fears wore away; now as you stated them to have been grounded on your notion of my evil propensities, did that notion wear away also---or did the effect cease, while the cause existed?

Answer. I thought that upon the first impulse that Lieutenant Torekler might have committed some violence or outrage; as Lieutenant Torekler had remained quiet, I began to think nothing at all about it.

Question. Before I enter on the main business of the 9th of August, will you just answer a question as to whether you were not by any means aware, when you wrote the Circular for "To-n Raw," in whose possession it then was?

Answer. I was not, and Lieutenant Torekler's name never occurred to me.

Question. You say I came into your house on the 9th August, and that when you first saw me, my head was turned away from you; although you could

observe the situation of my head, could you not say whether it was covered or not ?

Answer. No.

Question. You stated also that you had forbore (by which I understand you mean from violence, and insult) as long as any man of spirit could, before you drew your pistol ; was not your first address to me, before you would allow me to say what I came for, the provoking one of desiring me to leave your house ; and had I then said or done any thing threatening or insulting to you ?

Answer. I did begin as stated by desiring him to leave my house, as I would have nothing to say to him.

Question. How did you conduct me to the outer verandah ?

Answer. I put my hand gently behind Lieutenant Torckler, he walked before me without force.

Question. Did your hand touch my person then ?

Answer. I have a faint recollection of touching his arm.

Question. That was then the first assault and battery made on that day ?

Answer. The Court are to judge of the assault and battery

Question. Did I do greater injury to your person, when you say I took your arm, than you did to me when you say you took mine ?

Answer. Your mode of taking my arm was much more violent than my way of taking yours ; which was without any violence whatever.

Question. You have said this---“ conducting me to the verandah” occurred on your first coming out of your private room---will you, on good recollection, swear you did not first retire within your door, and return to the verandah room again, before the occurrence ?

Answer. I will.

Question. And upon like recollection you continue to assert that I preceded you to the outer verandah ?

Answer. To the best of my belief he did.

Question. Was it in the verandah, or the verandah room, that I offered you the note ?

Answer. I believe it to have been in the verandah.

Question. And where was it you say I took hold of your arm ?

Answer. As I was retiring to my bed room, in the verandah room

Question. Now describe accurately what difference you mean to be taken by the Court, between the terms “ bed room” and “ private room” frequently mentioned ?

Answer. They are the same---that in which the girl's bed was.

Question. You have declared that you took hold of my arm before I took hold of yours---Did you always put what the law calls these two batteries, in

the same order of time; in statements written or spoken out of Court?

Answer. I am not aware of having given any different statement of what has occurred.

Question. Your statement in evidence is that on your first appearance in the bow room you, after a command for me, to leave your house, conducted me by the Arm to the outer Verandah; have you, or not, stated elsewhere that I seized you by the arm upon your telling me, when you came out of your room, to quit the house; and that you retired to your bed room thereupon?

Answer. Not in any formal statement.

Question. But in a deliberate one?

Answer. I wrote several hurried notes to my friends, but I did not enter into it circumstantially, or in detail.

Question. Did you, or not, say in a formal statement, that I offered you the note in the outer verandah, that you then told me to leave your house, and that I there seized you by the arm?

Answer. I have no recollection of having done so.

Question. Is that your Signature and your memorandum?

Answer. This is mine, (Appendix No. 7 G. Page 95.)

Question. Will you admit that to be your writing and Signature?

Answer. I do. (Plan of his house. *)

Question. Now I wish to give you all the advantage of recollection, for on this point you seem not quite certain, and it is material to me. Do you persist in saying that your private room door opened in the direction you formerly asserted?

Answer. I had a letter last night which confirms my opinion that it is as I have stated, and will swear to it now.

Question. Was there either chick or Purdah to the door?

Answer. There is a chick, on the inside.

Question. Was it down or up on that occasion, and had it a Cloth or not?

Answer. I am confident it had no cloth on it, I can't say whether it was up or down.

Question. When you drew forth your Pistol, had I threatened you, as sailed you personally, (except the taking your arm) or exposed any weapon whatever to your view?

Answer. I was not aware that Lieutenant Torckler had any weapon, he had not threatened, or assaulted me, but from his countenance and gesture, I apprehended violence.

Question. Do you admit that your pistol was ready loaded with powder and ball, and primed, on the morning of the 9th of August?

Answer. I do.

* Vide fac Simile of this plan in the Appendix facing Page 95.

Question. Until I saw you take out a pistol, and heard you use menacing words to me, when you drew it forth, which words were "very well, Sir, if you will not leave my house," did I draw any weapon against you?

Answer. No.

Question. Where was I with reference to your bed room door exactly when I first drew my Pistol, and in what position did I draw it?

Answer. Lieutenant Torckler discovered his pistols when in the act of retreating from my bed room door to the opposite end of the room; at least I saw them first when he had reached that corner.

Question. Then my back was to you, and I was retreating, when I drew it?

Answer. By no means, his back was not turned to me his face was towards me.

Question. How far was that corner from your door?

Answer. About 22 feet.

Question. Although I retreated with my face to you, and discovered my Pistols while retreating, you did not see them till I had finished the retreat; were you looking at me all the time?

Answer. I imagine they were discovered while in the act of retreating as I saw them immediately after.

Question. And was it from a distance of about 22 feet that you say I fired at you first?

Answer. The length of the room was about 22 feet or thereabouts, at that moment I was standing in advance of the door, and Lieutenant Torckler at least a pace from the wall to the best of my belief.

Question. Then you had followed me with your Pistol; and how far came you into the bow room?

Answer. I had cleared the door about a pace.

Question. So that before I fired at you, you were out of your bed room?

Answer. Yes.

Question. Was I ever in your bed room?

Answer. I cannot say, I think he was entering it, if not in it.

Question. Show the Court the position of your bed, with reference to the door?

The Court adjourns at 4 o'Clock till Monday Morning next, at eleven o'Clock in the forenoon.

4TH DAY'S PROCEEDINGS.

Cawnpoor Monday 23rd November 1829.

The Court meets at eleven o'Clock in the forenoon pursuant to the adjournment.

The President, Members, Deputy Judge Advocate General, and Interpreter, all present.

The Prisoner, Lieutenant Torckler, appears in Court,

Lieutenant Goldney, 4th Native Infantry, is called into Court and reminded of his oath.

By the Prisoner.

Question. State which was the head of the bed, and about how far the bed was from the door ?

Answer. Here is the head of the bed (describing it as marked with a cross in the plan) and I suppose the bed might have been about two paces from the door.

Question. It is very material that the Court, should have as accurate a knowledge as it is possible to give it, of the distance I was from you when I fired both the Pistols ; now as yet you have been any thing but precise on that critical point ; for you have at various times stated it as having been two or three paces, three or four paces, five or six paces, and five or six yards. As therefore between these distances of two paces, and six yards, there is a wonderful difference in such an event, I must require you to give some tolerably precise distance, as the one you will stand to ; and on half a foot, or a whole foot, one way or the other, I shall not make any sort of cavil ?

Answer. I am not aware of having made those different statements. The only former statement to the best of my recollection, was five or six paces or five or six yards to which I must adhere. It is not likely that in such circumstances I should be able to speak within a foot or half a foot.

Question. Is this your hand writing and signature ?

Answer. Yes. (Appendix No. 10 G. Page 97)

Question. On my first fire having missed you, did I advance nearer for the second one ?

Answer. I have already stated that I have some difficulty in speaking on these minor points. I am unable to answer the question.

Question. Explain to the Court how you screened yourself from the second fire ?

Answer. I endeavoured to hold the door in such a position as to screen myself from the fire of the Pistol.*

Question. Were you behind the door, and in the bow room, and could you see me from where you stood screened ?

Answer. I saw Lieutenant Torckler as I firmly believe level his Pistol at me, and I believe that I was partly exposed when the shot took place.

On this being read the witness says, " towards " instead of " at "

Deputy Judge Advocate General. I shall retain the word " at " as you first made use of it.

Question. Do you swear my Pistol was levelled actually at you ?

The witness here describes his position by placing himself at one of the doors in Court.

Answer. I have every reason to believe it was.

Question. Behind which leaf of the door were you, when you say the Pistol was levelled at you, as you firmly believe?

Answer. The witness describes how---being the right leaf, looking out into the bay room.

Question. As every tittle of your evidence relating to the 9th of August is of vital importance to me, and as you have given an answer not quite congruous relating to my *intent*, I ask you, with reference to the true meaning of the word *murder*, as distinct from maim, wound, disable, and the like, will you distinctly assert that on the day of the 9th August, I acted with the intent to *murder* you?

Deputy Judge Advocate General. I object to that question---as it is the province of the Court, not that of the witness, to determine the intent.

The Court is cleared.

The Deputy Judge Advocate General reads the following extract of the summing up by Lord Kenyon, on the trial of D. E. Eaton, for publishing a Seditious Libel 1793.

29 Howell's
state Trials,
No. 821.

To enter into the hearts of men belongs to him, who can explore the human heart, it belongs to human judicatures to judge of the intention by the overt act of the person; and therefore if in all cases positive proof must be brought of evil intention, it would be proclaiming impunity for all offences where the intention goes to constitute the offence, which is in almost all criminal cases whatever. It may occur to a man that death is a consummation devoutly to be wished for, and he may think it a laudable act to put an end to the lives of as many people as he can, because it is that consummation; and if a man indicted for murder were to tell you by his Advocate, that this act was done from the purest intentions in the world to take the object out of the miseries of this world, and you were called upon not to convict unless you had positive evidence of the badness of the intention, I know not how crimes are to be punished.

In this case and in all others, we must refer to the act the party has done, and ascribe that to the intention of doing good, of doing evil, or of doing neither good nor evil; to which of those motives it ought to be ascribed? You will, under the solemn obligation you have been so often reminded of, answer that question, and want no advice from me.--"

Also, the following extract from the defence by Mr. (afterward Lord) Erskine, on the trial of James Hadfield, for High Treason in shooting at the King A. D. 1800.

27 Howell's
state Trials,
No. 1318.

The question, therefore, which you will have to try, is this: whether, when this unhappy man discharged the Pistol in a direction which convinced, and ought to convince, every person that it was pointed at the person of the king, he meditated mischief and violence to his majesty, or whether he came to the Theatre [which it is my purpose to establish] under the dominion of the most melancholy insanity that ever degraded and over-powered the faculties of man. I admit that when he

bought the Pistol, and the gun-powder to load it, and when he loaded it, and came with it to the theatre, and lastly, when he discharged it; every one of these acts could be overt acts of compassing the King's death, if at all or any of these periods he was actuated by that mind and intention, which would have constituted murder in the case of an individual, if the individual had been actually killed, I admit also, that the mischievous, and, in this case, the traitorous intention must be inferred from all these acts, unless I can rebut the inferences by proof. If I were to fire a pistol towards you, gentlemen, where you are now sitting, the act would undoubtedly infer the malice, the whole proof, therefore, is undoubtedly cast upon me.

The Court overrules the question.

The Court is opened and the decision read.

Question. Might I, or might I not, supposing my intent to have been to murder, found an opportunity of shooting, you before you got your pistol--- with reference to our previous positions?

Answer. I suppose Lieutenant Torekler might have produced his concealed fire arms at any time he thought proper.

Question. Had I not the power of making greater efforts than I did make, to detain you, when I laid hold of your arm still supposing my intent to murder?

Answer. I cannot say.

Question. When you laid hold of me in the first instance, did I make that an excuse for offering you violence, or did I then offer you any?

Answer. No.

Question. I want to recall to your remembrance, if possible, something more accurate as to whether there was a chick down or not, when you first entered the Zenanah and pulled the doors after you; do you recollect whether you, face touched the chick, or whether you afterwards observed it *between* us, on your getting your Pistol?

Answer. I believe the chick to have been up.

Question. Will you swear that I did not stoop, when I was getting out my pistols?

Answer. I believe not.

Question. You have stated some parts of my conduct to you that do not allow malice to be inferred; can you state any act of mine towards you, from which you inferred such malice on my part towards you as I am charged with?

Answer. I believe Lieutenant Torckler's wish was to draw me into a quarrel, because on one occasion when a servant of mine took a note to Lieutenant Wilcox---

The witness is stopped by the Deputy Judge Advocate General and reminded that hearsay or report of others, not being facts within his own knowledge cannot be received,

The witness continues his evidence,

I believed Lieutenant Torckler's desire was to irritate me by his answer to that circular, and I believe Lieutenant Wilcox's conduct to me was at his instigation.

Question On the other hand (whether there are, or not, all the proofs of the deadly malice imputed to me) have you not described me in a letter you desired to be made public, as beast enough to do any thing ill?

Answer. My opinion of Lieutenant Torckler is already on record. I believe I have.

Question. And did you, or not, ever declare you loved me as the devil did holy water, or some thing to that purport.

Answer. Yes.

Question And did you write these words, or to a similar effect, on a caricature having a figure that was thought some likeness of me in it?

"Thou obstinate, ill tempered, quarrelsome dog; if thy sentiments were but half as elevated as the tip of thy nose, Lord!! what a fine fellow thou wouldst be!"—

Answer. I believe I did.

Prisoner Mr. President and Gentlemen.

I wish to mention to the Court that I can prove that I did not know of this till after the 9th August.

Question. Now have you, since the opening of the Court, directly or indirectly, communicated any thing to any one on the subject of the evidence you had given, or intended to give, on this trial?

Answer. I have.

Question. To whom?

Answer. To most of the officers of my Regiment who have asked me out of Court.

Question. Though you knew they were summoned as witnesses also?

Answer. I did know they were to be examined as witnesses.

Question. To any one but the Officers of the corps?

Answer. To other friends at the Station Mr Sandeman was one I believe, Doctor Stevenson, and I believe Lieutenant Burnet.

Question. To any one but Gentlemen?

Answer. No. (vide correction of Evidence II)

Question. Are you aware that I have made an affidavit declaring you to have first assaulted me with a pistol, and placed me on my self defence before I fired?

Answer. Yes.

Question. Do you believe, then or have you reason to think, that my conviction of the offence, so charged against you, will tend in any way to save you from being tried for it?

Answer. Certainly.

Re-examined by the Deputy Judge Advocate General.

Question. You have been asked about your religious opinions---Now I ask you whether you considered the oath administered to you, was fully binding on your conscience---that in taking that oath you called upon God to be your witness that what you state should be the truth, that you implicated his vengeance, if what you deposed should be false.

Answer. I do so consider it.

Question. Under those solemn obligations, then, you gave your evidence with the full knowledge that there was a future state of rewards and punishments, the latter for false swearing among other moral crimes?

Answer. Yes.

Question. Were you absent or present at Loodianah, when it was reported to you that Lieutenant Torckler had directed your trees to be lopped?

Answer. I was present.

Question. And did Lieutenant Torckler send any message to you about it?

Answer. I understood the message to be meant for me to act upon.

Question. Upon cross-examination it was attempted to apply your word "*spite*" to the mere fact of a persons asking another for what is termed satisfaction.---Now state distinctly whether you intended in your evidence, that it was applied to that, coupled with the threat to post five Officers as Cowards and Blackguards to the whole army if they refused?

Answer. It was intended to apply to the whole letter collectively.

Question. You were asked whether you swore the peace against Lieutenant Torckler; before whom did you do so?

Answer. Before Major Holbrow.

Question. When?

Answer. On the morning of the 9th August.

Answer. Before or after he came to your house and fired two Pistols at you?

Answer. Afterwards.

Question. Did you swear the peace voluntarily---I mean was your doing so a suggestion of your own mind?

Answer. Yes.

Question. Was Lieutenant Torckler in arrest before you did so?

Answer. Not in close arrest.

Question. Do you know why he was not in close arrest ?

Answer. No.

Question. Was he placed in close arrest afterwards ?

Answer. He was.

Question. Do you know why he was placed in close arrest ?

Answer. He was placed in more secure custody in consequence of my wish--in consequence of my swearing the peace.

Question. How do you know this ?

Answer. I have heard so.

Question. Were you told that if you swore he should be so secured ?

Answer. The impression on my mind, is that I urged that he should be so, and offered to swear the peace if it was thought necessary.

Question. You have been asked about assault and battery---Now, as this is important, I wish to know whether you know what an assault is, and what a battery is, and whether they are the same in effect, or if different, in what respects they differ ?

Answer. I do not know what is the legal acceptation of the term precisely.

Question. Did you in taking hold of Lieutenant Torckler's arm, do so forcibly ?

Answer. No.

Question. Did you strike *at* him ?

Answer. No.

Question. In no manner, with or without a weapon ?

Answer. I did not.

Question. Did you in so doing *mean* to injure him in any way ?

Answer. No.

Question. Did you do it in an angry or revengeful way ?

The Prisoner objects to the question last but one put. I object to that question, on the principle, upon which the Court over-ruled a similar, though a more material one, put by me on the cross-examination as to the witness's knowledge of my intent to murder him, and in the belief that the Court are as competent to make one inference as the other.

The Court being ordered to be cleared, the Prisoner, through his friend addresses the Court.

Mr. President and Gentlemen.

It is usual when either party, (in this case I shall suppose myself the one who) makes an objection to the evidence, for him to state the grounds of his objection in open Court ; then for the prosecutor to show why the objection should not be held good ; and lastly for the Court to clear and decide upon it. I there-

fore humbly submit, that if the Prosecutor declines to reply to the objection when it is made, he cannot afterwards say a word against it ; for, from the moment the Court is cleared he is either divested entirely of his character as Prosecutor or else your Proceedings *invis clausis* are totally illegal ; for nothing can be done in the matter at issue, in the presence of the prosecutor while the Prisoner is absent. As I cannot tell what passes in closed Court, I am liable to correction if I suppose erroneously ; but if when I retire, the Judge Advocate takes any more part in the discussion against me, than for me ; if he does more than give the Court (on being asked to do so) as much of law & precedent as there may be in his books, or his knowledge, for my argument, as for the opposite side ; then I hesitate not to say that he acts in a great measure as my Prosecutor during my absence from the Court. You, Gentlemen, know best whether in the discussion of the objections I have heretofore deemed myself entitled to make, he has endeavoured as Judge Advocate to place my arguments in the strongest light, and exactly to balance the *pro's* and *contra's* of the question ; but on occasions when he has made no reply before the Court was cleared, I am bound to think he made nothing that can be construed into one after. For the Judge Advocate, as the law adviser of the Court, is the person to hold the balance, and to see that due weight is given to what either party may have cast into either scale ; and if he will not avail himself of his prosecutor's character at the proper time, I hope he does not supply the omission as Judge Advocate afterwards. I am quite satisfied (and I thank you that I have great cause to be satisfied) that my general and obvious interests are as safely under your protection whether I am absent or present, as they can be in any earthly guardianship ; but the reason of my having expressed the foregoing doubts is that the exact *distinction* between the characters of my Prosecutor and your Adviser, joined in one person, may be sometimes inadvertently lost sight of, and that the natural bias of the human mind will often (without any predetermination to that effect) induce a person to support his own opinions, when he becomes the arbitrator, rather more zealously than those of his opponent. When the Prosecutor does not think proper to reply, I have to quit the Court in total ignorance of what can be urged against me ; whereas if I heard it first, I might by a brief rejoinder (as I once before was kindly allowed to do) refute his counter observations ; but I beg to say that if the Judge Advocate argues, in cleared court, as zealously for me as he does for the prosecutor, I shall rest perfectly satisfied that I lose no advantage.

The Deputy Judge Advocate replies as follows,

Mr. President and Gentlemen.

My reason for believing the question to be valid is this.---The object of a cross-examination is to sift the credibility of a witness, and the object of a re-examination is to give him an opportunity of being consistent with himself and to explain any part of his testimony which has been impeached. Now it was attempted to make the Witness acknowledge that he had committed an assault and battery on the Prisoner. If he had done so, it might have been what the law considers a sufficiently violent provocation for an unlawful act. But if I on re-examination prove that he made no assault and battery, I thereby support

the Prosecution, by showing that there was no sufficiently violent provocation, and it will be seen that no mere affront by words or gestures only, is a sufficient provocation, so as to excuse or extenuate such acts of violence as manifestly endanger the life of another. As to the rest of the Prisoner's address he may rest assured that as God is my witness, I will behave to him without partiality, favor, or affection; and that if I can see any thing he does, but on which I may have doubts, it I say, I can see any way in which I can lawfully give my advice to the court to allow him any indulgence asked for, I will labour as zealously, and with as much degree of ability, for him as I shall for the prosecution.

The Prisoner delivers the following observations.

Under the circumstances of the great importance of my case; of the Prosecutor being left with the Court when it is closed; of his being the Law Adviser of the Court; and of all the honorable Members not being as well versed in the intricacies of the law of evidence, and the criminal law, as he is; I trust the Court will look upon my observations as the result of a natural and a pardonable anxiety, and not attribute them to any less worthy motive (which I sincerely disavow) than what is the offspring of that extreme solicitude. The situation described by me, is one in which the civil law of the land would revolt at putting an accused, and, pre-supposedly, an innocent man; but as the Military law admits and even commands a prisoner so to be placed, so much the greater must be that man's anxiety. I fully credit the Judge Advocate's assurance.

The Court is cleared and closed, and decides that the question be allowed.

The Court is opened and the decision read.

Lieutenant Goldney recalled.

Question. Did you when touching him do so in an angry or revengeful way?

Answer. No.

Question. Listen if you please to a definition of assault and battery?

T. mims
Law Dict. Assault is defined to be an attempt or offer, with force and violence, to do a corporal hurt to another; as by striking at him, with or without a weapon. But no words whatsoever, be they ever so provoking, can amount to an assault, notwithstanding the many ancient opinions to the contrary. 1 Hawk P. C. c. 62 551.

Any injury whatsoever, be it ever so small, being actually done to the person of a man, in an angry or revengeful, or rude or insolent manner, as by spitting in his face, or any way touching him in anger, or violently jostling him, are batteries in the eye of the law. 1 Hawk P. C. 263 264.

From the French, Battre, to beat or strike.

In many cases a man may justify an assault; thus, to lay hands gently upon another not in anger, is no foundation of an action of trespass and assault; the Defendant may justify *molliter manibus imposuit* in defence of his person or

goods ; or if his wife, father, mother, or master ; or for the maintenance of justice.
Bract. 9 E. 4 : 35 H. 6 C. 51.

Now do you swear that on the 9th August you did not commit any Act therein mentioned, or in any manner angrily touch Lieutenant Torckler.

Answer. Yes, I do swear so.

Question. You have been asked about a Caricature, whose was it ?

Answer. My own.

Question. When did you write this observation mentioned ?

Answer. It must have been about April 1827.

Question. Were there any other figures in it ?

Answer. It was a print sent to me from England representing a man in a Fog. &c. There were coaches and Horses &c. I believe.

Question. Did you write Lieutenant Torckler's name on it, as referring to that figure ?

Answer. To the best of my belief I did not.

Question. Do you know that it was written on it ?

Answer. I believe it was written on it ; the original application of the figure was not made by me.

Question. Did you circulate it for general inspection ?

Answer. No.

Question. Did you ever intend that he should see it ?

Answer. No.

Question. Do you believe he did not till after the 9th August ?

Answer. I have no reason to believe that he did not.

Question. You have been asked about your communications with other witnesses, are you Lawyer enough to know that in a Court of justice all the witnesses ; that to are to be examined, Ladies and Gentlemen, are in attendance & hear each other's evidence ?

Answer. No.

Question. Did you communicate to them as nearly as possible, every thing correctly ?

Answer. On the points I communicated to them, I did to the best of my belief.

By the Court.

Question. You have said that the desperate letter of Lieutenant Torckler was one of the reasons, for your having a loaded Pistol---Was not the letter signed by Lieutenant Wilcox ? If so why do you call it Lieutenant Torckler's ?

Answer. It was declared by Lieutenant Wilcox to have been written at Lieutenant Torckler's desire.

Question. You have said that you heard that there was a vague report of Lieutenant Torckler's being connected with Natives in the neighbouring villages ; of what kind or description were these natives said to be ?

Answer. Russian sort of fellows.

The evidence is read over to the witness on coming to this answer the witness says---" I wish to insert, & was once in his tent on the march" Page 35 A: Page 38. B. It may have been altered."

" 38. C. But I have a recollection of having seen it."

" 43. D. A few paces."

" 43. E. And cocked it, (at the Prisoner's request & with the consent of the Witness)."

" 64. F I have a recollection of having seen it occasionally in the day."

" 71. G. This was subsequently to the 9th August "

" 71. H. It strikes me that I have communicated with my Native Girl, that she has questioned me on the subject."

The Prisoner, through his friend, here reads a passage from 307. Hough's practice of Courts Martial.

" A battery is more than an attempt to do a Corporal Hurt to another ; but any injury whatsoever, be it ever so small, being actually done to the person of a man, in an angry or revengeful, or rude, or insolent manner, such as spitting in his face, or in any way touching him in anger, or violently jostling him out of the way, is a battery in the eye of the law.* For the law cannot draw the line between different degrees of violence, and therefore totally prohibits the first and lowest stage of it ; every man's person being sacred, and no other having a right to meddle with it in any the slightest manner. It should be observed that every battery includes an assault. The injury need not be effected directly by the hand of the party. Thus, there may be an assault by encouraging a dog to bite ; by riding over a person with a horse ; or by wilfully and violently driving a Cart, &c against the Carriage of another person, and thereby causing bodily injury to the persons travelling in it."

Question Did you snap your Pistol at Lieutenant Torckler, before or after Lieutenant Torckler's first shot at you ?

Answer. After.

Question. Was the door behind which you screened yourself a pannelled or glazed door.

Answer. A pannelled door.

Question. Do you still by the oath you have taken affirm that you had not returned from the bed room and opened the door (you had previously closed,) and entered the room in which Lieutenant Torckler was, before you found that he had opened the door to enter your Zenanah ?

* Hawk p. c. 263 264. quoted below in part down to the word law by the D. J. A. G.

Answer. I will swear that I did not.

The evidence is read over to the Witness he acknowledges it to be correctly recorded and is ordered to withdraw.

The Court adjourns at half past three, till tomorrow at eleven in the forenoon.

5TH DAY'S PROCEEDINGS.

Cawnpore Tuesday 24th November 1829.

The Court meets at eleven o'Clock pursuant to the adjournment.

The President, Members, Deputy Judge Advocate General and Interpreter, are all present.

Lieutenant Torckler the Prisoner appears in Court.

Lieutenant Wilkie 4th Native Infantry is called into Court and duly sworn.

Examined by the Deputy Judge Advocate General.

Question. Do you remember receiving a letter or a note from Lieutenant Wilcox on or about the 19th of July last, having reference to some objection that had been made about Lieutenant Torckler's being a second in a duel with any one?

Answer. I did.

Question. Have you got that note?

Answer. No, I have not.

Question. What became of it?

Answer. I believe it was destroyed?

Question. By whom?

Answer. By Major Holbrow.

Admitted by Lieutenant Torckler to be read with the reservation mentioned, viz. by admitting the letters in question, I only admit that they were written by the signer of them, but not the truth of their contents,

Question. I will read a copy of that note.

(The letter is read, Vide Appendix B. Page 92.) Is that the letter you received?

Answer. Yes.

Question. Did you receive this from Lieutenant Wilcox personally or in what way?

Answer. I received it personally.

Question. Do you remember when, and if possible at what hour?

Answer I don't recollect when, but it was in the afternoon.

Question. When you received it, can you swear to the word *instant* being therein written twice ?

Answer. No I can't.

Question. Do you remember whether any parts of it were interlined or erased ?

Answer. I think it was interlined.

Question. Did you show it to any person, and to whom, on the day of its receipt ?

Answer. I shewed it to Lieutenant Goldney.

Question To no others ?

Answer. I really forget now, it is so long.

Question Did you intimate to Lieutenant Wilcox your intention to show it to any person ?

Answer. Yes, I mentioned that I should show it to the rest of the officers concerned.

Question Their names not being mentioned in the note, state who you believed them to be ?

Answer. Captain Wilton, Lieutenant Oldfield, Lieutenant Salter and myself

Question. Did you as you told Lieutenant Wilcox show it to them ?

Answer I showed it to Lieutenant Goldney.

Question. Did you reply to that note in writing ?

Answer. Yes.

The reply is admitted by the Prisoner to be read.

The correspondence is here read, Vide Appendix Page 92, 3. & 4

Question. By whom was that reply written, I mean not its dictation, but the hand writing ?

Answer. By myself I believe.

Question. Your belief in this case will not do, one way or the other say by whom it was ?

Answer. I wrote it myself I do not recollect just now.

Question. Again, if you please, say whether you will swear or no to your writing it yourself with your own hand ?

Answer I wrote that letter myself.

Question. Besides that letter did you receive any other private one on the same day and same subject from Lieutenant Wilcox ?

Answer. Yes, there was another, but it came at twelve at night.

Question. Have you got that one ?

Answer. No I have not.

Question. Was this second note from Lieutenant Wilcox, received before or after your reply to his first ?

Answer. It was after my reply.

Question. Do you remember in your reply using the expressions,--- "claim the pledge,---" "or fulfil the promise?"

Answer. I don't recollect.

Question. After writing that note did any person correct it for you ?

Answer. I can't say at present, it is so long.

The letter is here read,---Vide Appendix page 93. D.

Question. Is that the letter ?

Answer. Yes.

Question. Did an apology from Lieutenant Wilcox come to you ?

Answer. The one that came at twelve o'clock was an apology.

Question. Before receiving this apology did you receive another letter from Lieutenant Wilcox relating to the subject of the first ?

Answer. I don't recollect it.

The letter of apology is here read, Vide Appendix page 93, G.

Question. Did you receive that apology ?

Answer. I did---to the tenor of it.

Question. Did you accept or return that apology ?

Answer. I returned it, I am not certain whether I or Captain Wilton returned it, I know it was returned.

Question. With a note, or did you personally returned it ?

Answer. There was no note, I am not certain whether there was any note sent with it. The second apology is admitted and here read,---Vide page. 93. Appendix F.

Question. How long have you been with Lieutenant Torckler & Goldney, in the same Regiment ?

Answer. Three years.

Question. State the terms on which you have considered Lieutenants Torckler and Goldney to be during that time ?

Answer. Not on the best of terms.

Question. Would you designate the terms to have been unfriendly ?

Answer. They were not on speaking terms ever since I joined the Corps.

Question. Would you style the terms on which they were to have been hostile to each other ?

Answer. No, I could not style them so.

Question. On what terms were you with Lieutenant Torekler in June or July last ?

Answer. I believe I was on speaking terms with him.

Question. Would you have dined in company with him, would you have taken wine with him, I mean would you have asked him to do so ?

Answer. Yes, I would, and I would have asked him.

Question. This relates to June 1829---What terms were you on with Lieutenant Torekler, when Lieutenant Goldney joined as Quarter Master of the Regiment ?

Answer. I was not on speaking terms.

Question. Would you have met him in company at dinner, knowing he was to be there ?

Answer. No I would not.

Question. On what terms was Major Holbrow with him ?

Answer. I can't say I am sure.

Question. Do you know whether Captain Caley was on speaking terms with him ?

Answer. No he was not.

Question. And Captain Wilton ?

Answer. No I don't know whether he was or not.

Question. Lieutenant McDonald ?

Answer. I am not certain whether he was or not.

Question. Lieutenant Oldfield ?

Answer. I can't say.

Question. Lieutenant Salter ?

Answer. He was not.

Question. Lieutenant Wilson ?

Answer. No he was not.

Question. Lieutenant Wilcox ?

Answer. I am not certain whether he was or not.

Question. Lieutenant Vicary ?

Answer. I am not certain.

Question. And Ensign Beecher ?

Answer. I am not certain but I think he was on speaking terms.

Question. Ensign Maitland ?

Answer. I am not certain---I cannot answer that.

Question. And Ensign Patterson?

Answer. I can't answer that either.

Question. Was Ensign Hill.

Answer. I can't answer that either.

Question. Was Doctor Leese, any more than in a professional light?

Answer. I don't know.

Question. You must have a reason for knowing that the Officers you have particularized, as not being on terms with Lieutenant Torekler were not so. What are those reasons?

Answer. They were not on speaking terms when I joined the Corps, I can't say for what reason. Captain Caley, I believe has private reasons.

Question. State generally whether you believed from all you saw, and heard, whether there was any ill will, resentment, or hatred between Lieutenant Goldney and Lieutenant Torekler, either before or after the latter lost his Appointment.

Answer. No I don't think there was.

Question. Did you entertain the opinion mentioned, or alluded to in Lieutenant Wilcox's letter?

Answer. I did.

Question. Did you authorize any person to give that as your opinion?

Answer. I did; Ensign Becher.

By the Prisoner.

Question. I believe you have been called in at this stage of the trial for your personal accommodation, in regard to some Leave of Absence you require, therefore as I have not many questions to ask you, besides such as the recent examination calls forth, I may apprise you that the length of your detention will be greater or less, accordingly as your answers are, direct to the matter of the questions, or otherwise--Say then, did you, or not, pledge your word distinctly to Lieutenant Wilcox, that you would not make the note public, nor give it up on any account?

Answer. I said as far as I was concerned, that it should not be made public, but that objection was over-ruled by the rest of the Officers concerned.

Question. When you gave the pledge, did you on your oath make any proviso as to the other Officers.

Answer. No I made no proviso for the other Officers.

Question. The pledge then was unconditional, save any mental reservation you might have had?

Answer. I simply gave a pledge as far as I was concerned, but not for the other Officers.

Question. Explain that term, "as far as you were concerned?"

Answer. As far as my name was alluded to in the paper.

Question. And did you give Lieutenant Wilcox clearly to understand that it was only as far as your own name you would keep private?

Answer. I think I did.

Question. Can you not, on your oath, make a more positive assertion?

Answer. No I cannot.

Question. After this, did you preserve inviolate as much of your pledge as related to the non-appearance of your own name in the business of the note?

Answer. Yes I did; I showed it to the rest of the Officers, and I believe I mentioned it in a note to Lieutenant Wilcox. What I meant by private was that it should not be shown to the Commanding Officer.

Question. Did you explain that limited construction of the word "private" to Lieutenant Wilcox at the time of the pledge?

Answer. I think I did. - To the best of my belief I did.

Question. Did you consent to have it shown, after all, to the Commanding Officer, in its original state?

Answer. No I did not consent to it.

Question. Did you object to it?

Answer. Yes I objected to its being shown.

Question. To whom was your objection made?

Answer. I don't recollect just now.

Question. On a point so important to a man of honour, as his very proper objection to the least violation of a *Pledge of Honour*, do you really forget to whom you made the objection calculated to preserve your integrity?

Answer. I really do forget, but Lieutenant Salter I think was present at the time.

Question. And did you after the pledge and the objection, made to you know not whom, allow yourself to join the others, in the public notice taken of the document?

Answer. Yes I did.

Question. Do you swear positively that the second note of Lieutenant Wilcox, was received after your reply had been sent to him?

Answer. No I can't swear that.

Question. Why did you swear it then?

Answer. My first note in reply to the one Lieutenant Wilcox brought was sent about seven o'clock in the evening. The apology was sent to me about 12 at night, I do not recollect that in the interim any other note from Lieutenant Wilcox had been received by me.

Question. Do you not remember having got a note from me before you sent your reply, and returning that note (read or unread you know best) along with your reply ?

Answer. You remind me of another letter having been received, but after my reply had been sent.

Question. Did you or not return that second note unread or un-opened ?

Answer. I did return it---to the best of my recollection un-opened.

Question. Did you return it after you had sent your reply to his first letter---i. e. the one brought to you by him ?

Answer. No I did not.

Question. Did you return it along with your reply or before it ?

Answer. I am not certain, whether I sent it along with my reply or after.

Question. Do you remember receiving the note ?

The note is here read.—Vide Page, 92 Appendix G, *Letter C.*

Answer. I don't recollect ever seeing it or hearing it read.

Question. As I will suppose you were anxious about the fulfilment of your own pledge to Lieutenant Wilcox, what reason had you for returning the second note unread, and were you in any degree prompted or urged by any one to do so ?

Answer. The other Officers requested that I should send it back.

Answer. The Prosecutor asked you who wrote your reply (meaning the mechanical use of the word) and I request you to say who composed or dictated it ?

Answer. We all dictated it.

Question. Who were they ?

Answer. Captain Wilton, Lieutenant Oldfield, Lieutenant Goldney, Lieutenant Salter, and myself.

Question. But Lieutenant Salter was not a party concerned ;—only a Volunteer to and in the composition ?

Answer. Only a Volunteer. (vide correction of evidence. A)

Question. Will you swear that Lieutenant Goldney did not compose it himself, or was not the principal composer of it ?

Answer. He was a principal composer of it.

Question. Was the rough sketch in his hand writing ?

Answer. To the best of my recollection it was.

Question. Had you a fair share in the composition in proportion to your rank, or talent, or on whatever principle it was shared among you ?

Answer. I mentioned my objection to handing it up to the Commanding Officer, and that was all the share I had in it.

Question. Does that objection appear?

Answer. It was mentioned as far as I was drawn into making the pledge or promise inadvertently.

Question. Was Lieutenant Goldney your chief adviser not to read the second note of Lieutenant Wilcox?

Answer. I really don't recollect.

Question. Did he take any part in the advice?

Answer. Yes he did.

Question. Was my second apology accepted by you, and was my first note returned as I requested it might be?

Deputy Judge Advocate General.---I acknowledge that it was accepted by the five Officers at Major Holbrow's request, and if you require it, that the first letter from Lieutenant Wilcox was to be considered as cancelled whether returned to him or no.

Question. Were any copies of the cancelled papers retained by any of you?

Answer. I don't know.

Question. Is 1826 included in your three years before mentioned?

Answer. I joined the Corps in December 1826.

Question. With reference to what you have said about the terms Lieutenant Goldney and I were on, all the time you were present, will you swear that they were owing wholly to me, or that the most ill will was not on his side?

Answer. I can't say.

Question. Have you heard Lieutenant Goldney speak of me in my absence, and if so, can you call to mind any particulars of his remarks?

Answer. No I can't recall any particular remarks.

Question. Can you say if any you heard were of rather a spiteful, or a malevolent, than of a more charitable nature?

Answer. I don't recollect whether any I have heard were of a charitable or a spiteful nature.

Question. You have sworn that we (i. e. Lient. Goldney and myself) were not on speaking terms all the time you were with the Regiment; I want to remind you that we were so, and you may qualify that answer now if you please?

Answer. I believe one day before Lieutenant Goldney left the Regiment that he and Lieutenant Torckler were on speaking terms.

Question. Can you recollect a reconciliation between us, and if so, will you still say we were only on the terms it put us, for one day?

Answer. To the best of my recollection only that time.

Question. Were you absent or present the the Corps when Lieutenant Goldney rejoined it from the 36th Native Infantry ?

Answer. I was present.

Question. Will you really say that you and I were not on speaking terms on the 29th of June ?

Answer. I can't say whether we were or not.

Question. But you have said we were not ?

Answer. I admit we were not.

Question. Will you declare that so late as the 15th of July I had reason, from yourself, to know you were, or meant to be, on unfriendly terms with me, even then ?

Answer. I can't swear to that.

Question. With the help that allusion may give to your memory, will you still swear that we were not on terms from the 25th of June to the 3d of July ?

Answer. I really can't say, it is so long since.

The President's complaining of the protracted nature of this examination, drew forth the following observations from the Prisoner which are read to the Court.

Mr. President and Gentlemen.

Considering that the Prosecutor has been quite unrestricted in his own examinations, and, that in the present one especially, he has not even alluded to the matter of the charge, nor the day of its alleged occurrence ; I cannot help saying that I feel it a hardship not to be allowed to refute, by cross-examination, whatever has been averred in the one which preceded it. He has endeavoured to re-establish the credit of his principal witness, by procuring evidence of the truth of a doubtful part of it ; and I can show that the very person he calls for that purpose, cannot, by any means, swear positively in confirmation.--I can only say that I am ready to keep within any limits the Court may assign to both parties ; but as the late examination in Chief, in particular, must have been thought by the Prosecutor of importance to his case, or not ; and as, if not, he, and not I, has been trifling away the time of the Court ; while, if it be important, I trust its weakening, or refutation, will be thought at least equally so to my defence ; I hope the Court will not impute the extraneousness of the matter to me.

Question. Then why have you said so, and then qualified it, and then sworn it positively again, and finally decline swearing to the fact ?

Answer. I can't bring any circumstance to my recollection which induces me to believe that we were on terms from the 25th June to the 3rd July.

Question. Is that your hand writing ?

Answer. Yes 't is. (Appendix Page 92 Letter A)

Question. Remember all that you swear to, you are considered to swear to from your own positive knowledge (unless when you qualify the evidence your-

self) and you are therefore requested to state whether you know, of yourself, that Captain Caley, Lieutenant Salter, and Lieutenant Wilson, were not on terms with me, when Lieutenant Goldney rejoined.

Answer. I think Captain Caley and Lieutenant Salter were not, and I am certain Lieutenant Wilson was not.

Question. Have not these matters, which you plead having in a great measure forgotten, been more than once talked over by you, with any one, between that time and this?

Answer. I dare say they may have been talked over.

Question. Have you, or not, written, or declared verbally since the 9th of August, that you hoped I should be *hanged*, or that you wished I might *swing* (or words entirely to that purport) for that transaction?

Answer. I really can't answer that question, I might have said so.

Question. Have you, or not, written to that effect to Lieutenant Bennett of the Artillery?

Answer. I don't recollect it.

Question. Do you think it probable that you have?

Answer. Yes, I think it very probable I might have done so.

The cross-examination here closes.

Re-examination by the Deputy Judge Advocate General.

Question. Did you make the promise of not giving the paper up publicly for the purpose of its being laid before the Commanding Officer at the same time or in the same interview in which you warned Lieutenant Wilcox that you would show it to the other Officers?

Answer. Yes.

Question. From the word used *warn* I presume you anticipated some thing of the sort?

Answer. I cannot say whether I anticipated any thing at the moment.

By THE COURT.

Question. You have stated that you do not know that any ill will, resentment, or hatred existed between Lieutenants Forekier and Goldney, subsequently to the former losing his appointment and the latter getting it. Do you mean by that answer, to say you were ignorant of their being on bad terms?

Answer. No I was not ignorant of their being on bad terms.

Question. Were your objections to the public use of Lieutenant Wilcox's letter made to one or more, and if more than one, state if you please to whom?

Answer. To the Officers concerned, assembled together.

Question. Have you had any conversation with Lieutenant Goldney, during the last week, and up to the time of your coming here to-day, relating to any part of the evidence he had given, and which you have given?

Answer. I have heard Lieutenant Goldney talk about what has been going on here.

A. V de When the evidence is read over to the witness, on coming to this
Page. 24 answer the witness says,---“ Lieutenant Salter was I believe alluded to in
 the letter to me from Lt. Wilcox ; he was therefore a party concerned.”

The evidence is read over to the witness he acknowledges it to be correctly recorded, and is ordered to withdraw.

Lieutenant Wilcox 4th Regiment Native Infantry is called into Court and duly sworn.

Examined by the Deputy Judge Advocate General.

Lient. Wilcox ; -I am extremely sorry that I should have to call you against so near a relation, as your Brother-in-law, but my situation and duty compel me. I shall ask you as few questions as may be compatible with the task I have to perform.

Question. Will you be so good as to state whether you wrote a letter to Lieutenant Wilkie of your Regiment about the 19th of July last, respecting Lieutenant Torekler being your second in a duel ?

Answer. I did not write the letter. It was dictated by Lieutenant Torekler, it was in my hand writing.

Question. Is this the letter.

Answer. That is the letter.

Question. On your oath, was the word *instant* repeated.

Answer. Yes I believe it was.

Cross-examined by the Prisoner.

Question. Do you remember whether one of the words *instant* was erased, or a pen drawn through it before the note was sent ?

Answer. I don't remember.

Question. In a dictated letter, might you not have repeated a word, spoken merely as a catch word; as suppose you had been at the first writing of the word, and the person dictating repeated it, but without meaning it to be again written ?

Answer. I might, certainly.

Question. What is your own notion of it ; was it purposely repeated, do you think, or accidentally ?

Answer. I think if it was there twice, it was a mi-take.

There being no further questions the witness retires.

The Court adjourns at 4 o'Clock till eleven tomorrow morning.

6TH DAYS PROCEEDINGS.

Cawnpore, Wednesday 25th November 1829.

The Court assembles at 11 o'Clock pursuant to the adjournment.

The President, Members, Deputy Judge Advocate General, and Interpreter present.

The Prisoner Lieutenant Torckler appears in Court.

Lieutenant Wilson 4th Regiment Native Infantry is called into Court and duly sworn.

Examined by the Deputy Judge Advocate General.

Question. Will you do me the favour, to say whether at any time previously to the 9th August you lived with Lieutenant Torckler at Sultanpore, Oude?

Answer. I lived with him when we first went there.

Question. When was that, and up to what time did you live with him?

Answer. The Regiment arrived there on the 15th December 1828, and in January, February, March, and April, I lived with him.

Question. During that period did you ever see Lieutenant Torckler practise with pistols at a mark in the Verandah of his house?

Answer. Yes I have.

Question. State what that mark was?

Answer. It was a figure representing an Officer in the 4th Native Infantry, I believe so.

Question. State whom you believed that figure to represent.

Answer. I believed it to represent Major Holbrow.

Question. Did you ever hear Lieutenant Torckler speak about Major Holbrow about the time, viz, when he practised at the figure?

Answer. Yes I have.

Question. Could you recognize Lieut. Torckler's pistols if you saw them?

Answer. I can't say I could, there are so many alike.

Question. Were you present with the Regiment when Lieutenant Goldney joined on the 29th June as Interpreter and Quarter Master?

Answer. No, I was at Benares on sick leave.

Question. When did you return?

Answer. In the latter end of July.

Question. When did you leave, and previously to your departure, on what terms were you with Lieutenant Torckler?

Answer. About the 5th of May; on those terms that I was determined never to live with him again.

Question. When you returned, what do you believe the terms Lieutenant Goldney and Lieutenant Torckler were on?

Answer. Unfriendly terms.

Question. State the ground of your belief?

Answer. I merely heard so, but when Lieutenant Goldney first left the Corps for to do duty with the 26th Native Infantry, as Interpreter and Quarter Master he promised Lieutenant Torckler.---

The witness is here interrupted by the Deputy Judge Advocate General and requested to confine himself strictly to what he can state from his own knowledge and not from the hearsay of others.

Question. From what you knew, saw, and heard, is it still your belief that they were on unfriendly terms when you rejoined?

Answer. Yes I do.

Cross-examined by the Prisoner.

Question. Describe how the figure was made; was it an effigy or one marked on the wall?

Answer. It was a side figure first marked on the wall, marked with charcoal.

Question. Was it, on your oath, commenced with a view to its resembling any particular person; or did any resemblance strike you after it was done?

Answer. When it was drawn I was called in, Lieutenant Torckler never told me it was intended for any person in particular.

Question. Was I the only officer of the Corps who practised at it?

Answer. I have fired once or twice myself at it.

Question. Was it drilled through and through with bullets?

Answer. It was.

Question. On your oath, did you, or not, fire oftener than I did?

Answer. No, I did not.

Question. State what cause I gave you for being on bad terms with me?

Answer. From the way I saw he was going on in, continually showing me his public letters, and for three weeks, not once coming into my sick room though I was living in the same house with him and for having sent Ensign Patenson to me with a message saying that as he heard it was my intention not to live in the Bungalow with him that if I wanted to quit it he would give me any 900 Rupees again if I wished.

Question. Now do you swear you did not state to any one that you felt annoyed at my going too often, or frequently, into your sick room?

Answer. I swear I did not tell any one so; with regard to the question I think it right to say why that question is put to me, that I mentioned casually one day to Doctor Leese that Lieutenant Torckler coming into my room and giving his opinion about me, was annoying to me.

Question. At what time and how long were you sick?

Answer. I think my sickness commenced in the month of March and continued the whole of April. I can't answer those long questions, I was more than three weeks sick in the same house with him, five or six weeks.

RE-EXAMINED.

Question. Have you no other cause of hostility to Lieutenant Torckler than those you have mentioned ?

Answer. No I have not.

Question. Was his discontinuing his visit to you, before or after your mentioning what you have stated to Doctor Leese ?

Answer. Afterwards.

The witness retires there being no further questions.

Station Orders 5th August, appointing Lieutenant Griffin Interpreter and Quarter Master, 24th Native Infantry to be Interpreter to the Court is here read.

Lieutenant Griffin is duly sworn.

The Prisoner through his friend addresses the Court as follows.

Mr. President and Gentlemen.

I most respectfully request that the Court will now, on the introduction of a new witness for the prosecution, be so kind as to warn, or inform, me whether I shall be allowed to cross-examine on every point; on which the Prosecutor shall have previously examined no matter whether it bear directly on the charge or no, or whether it is their pleasure to fix any limits to the future investigation. It is not an enviable situation, nor yet an easy one, for a man accused of a felony on a particular day, to have to defend and account for all the acts of his life for the preceding two years at the least ; most of the points, too, having been long decided by the proper Superior Authorities, and therefore considered by me to have been set at rest. But I beg to assure the Court that I am far from unwilling to meet the whole enquiry, and only want to be informed if I am still to continue to prepare for defending my past actions since 1826, or only to confine my exertions to the specific Charge. Most happy shall I be to attend strictly to the wishes of the Court, and if it feel disposed to lay down a rule, perhaps it will inform me what the nature of it is. But I beg to ask the Judge Advocate to tell the Court whether I am, or not, entitled to push to the utmost, on cross-examination, every witness that has been examined, no matter on what subject---be the same relevant or irrelevant---by himself in chief. I respectfully inform the Court, that I am aware of witnesses' motives and feelings; which I cannot let the Court into at present ; but a Judge on the Bench will always presume a necessity for a question till he sees by the result that it has not been necessary, and then direct the Jury to strike it from their memory. This rule was declared by the late Lord Ellenborough.

Deputy Judge Advocate General. The only observation I should wish to make is that it was the Prisoner & not I who have referred at all to March 1826.

Jewyer Sirdar Bearer in the service of Lieutenant Goldney is called into Court and duly sworn.

Examined by the Deputy Judge Advocate General.

Question. State all you saw on the morning of the 9th August, between your Master Lieutenant Goldney and Lieutenant Torckler;

Answer. Lieut. Goldney was going to dinner at the Mess House, In the morning, he gave a note to the other bearer to deliver to the Doctor, he did not meet with the Doctor but gave the note and came back, when the Doctor came home he caused the medicine to be sent, the Doctor's bearer gave it to me, and went away. At nine o'Clock when the Sahib returned from the Mess, I gave him information that it had arrived from the Doctor. About eight o'Clock on the morning of the 9th August, I was fanning Lieutenant Goldney with a Pankah; about an hour elapsed, when Lieutenant Goldney told me to go and take rest, as he himself was going inside & on this went inside. I sat down at the door of the Verandah. I did not know Lieutenant Torckler though I knew all the others, the Sahib, Lieutenant Torckler dressed in a great cloak, in one hand was a note, the other was inside. I ran & gave information to Lieutenant Goldney. I first called out "Sahib, Sahib," which not being heard I repeated my call saying "Lieut. Torckler has arrived---Lieut. Goldney said "God damn you get out." Lieutenant Goldney dressed in a Shirt and Pajamahs came out. Lieutenant Torckler was about to enter; when Lieutenant Torckler arrived at the door, a conversation passed between him & Lieut. Goldney. Lieut. Torckler gave Lieut. Goldney a note. Lieut. Goldney did not take it, & said to Lt. Torckler. No, No, No, No. Lieut. Goldney called out Bearer, Bearer, several times. I was standing in the rear of the two Gentlemen, on which a Bearer and two Kitmutgar's came up, this was at the door Lieut. Goldney said, "turn Lieut. Torckler out." Lieutenant Goldney re-entered the room, Lieutenant Goldney ran into the room, and shut the doors on Lieutenant Torckler, who turning round made a push against the door,---Lieut. Torckler pushed the door with one hand and took out a pistol with the other. At this time Lieutenant Torckler was in the centre room, and Lieutenant Goldney in the inner Zonamah room. Lieutenant Torckler at this time was behind the pillar, Lieutenant Torckler fired a Pistol, on this Lieutenant Goldney took his Pistol, on which Lieutenant Torckler took out another pistol and the Pistols of each were levelled at the same time; they were both levelled at the same time. Lieutenant Torckler's Pistol went off, Lieutenant Goldney hid himself behind one leaf of the door, the ball went past the leaf of the door behind which Lieutenant Goldney hid himself, and broke part of the Zelmil of a door beyond it, on which Lieutenant Goldney and Lieutenant Torckler closed, they were both wrestling or struggling with each other, and by the side of them there was a couch, and by which there was a teapoy by the side of which they fell, the teapoy upset, and they fell on the Couch on which we four (two Bearers and two Kitnutgars) separated them; when we attempted to separate them, they resisted our endeavours, we could not do so, at this a Sepoy arrived on which Lieut Goldney said to me "take me out; I think Lieutenant Torckler has Sepoys with him." We could not succeed, but the Seapoy succeeded in separating them, the Seapoy had separated Lieutenant Goldney and Lieutenant Torckler, on which Lieutenant Goldney's Sirdar Bearer led him outside, and I remained holding Lieutenant Torckler: at this interval the Seapoy took up the three Pistols one in one place, and two in another, the Seapoy on this placed the three before Lieutenant Torckler who took two and said the other was Lieut. Goldney's, leave it: then Lieut. Torckler ran to his own Bungalow, and Lieutenant Goldney went over to the Major's, when I went over and saw Lieutenant Goldney his shirt and Pajamahs were torn.

Question. Who fired his Pistol first, your Master or Lieutenant Torckler ?

Answer. Lieutenant Torckler.

Question. How many times did your Master try to fire at him ?

Answer. Once.

Question. Did his Pistol go off.

Answer. Once, it did not go off, and he threw it away.

Cross-examined by the Prisoner. .

Question. Did I ever go into the Zenanah room ?

Answer. No.

Question. Did I go to the threshold, or how far was I all along from that door ?

Answer. About four or five paces from it.

Question. Was I ever nearer than that.

Answer. He did not go nearer than that.

Question. Then it was not the zenanah door that I struck against or opened ?

Answer. No, the outer door.

Question. And if any one has sworn I did open it, or went in any degree into it, has he told a wicked and downright lie ?

Answer. It is all a lie.

Question. Do you swear that on your Master's coming to his zenanah door, on your having called him, I offered him a note ?

Answer. When he came out of the zenanah and came to the outer door he offered him the note.

Question. Do you swear positively that your master did not attempt to fire till I was presenting my second Pistol ?

Answer. At the same moment that Lieutenant Torckler was going to fire his second Pistol, Lieutenant Goldney attempted to fire his.

Question. Have you any doubt that a contrary assertion is utterly false, speaking from what you saw the whole time ?

Answer. It is; I was present.

Question. You told your master that I (mentioning my name) had arrived ; but if you did not know me, how could you have done so ?

Answer. I saw him one night before when I went to Lieutenant Wilcox, about ten or twelve days before.

Question. Did Lieutenant Goldney level his Pistol at me ?

Answer. Yes.

Question. How did I pull out my pistol, did I stoop, or remain upright, or how ?

Answer, Stooping a little.

Question How does the Zenanah door open ?

Answer. It opens into the outer room

Question Behind which leaf did your Master hide himself, and show the court how far he closed it ?

Answer. Behind the right leaf, in a stooping position.

Question. Did he close the door leaf on himself, or go behind it ready closed ?

Answer. The right leaf was shut, the left was open all the time, there was a chick down with a piece of cloth on it, in the centre.

Question. Through which leaf of the venetian door did the bullet pass

Answer. The left.

Question. Do you know the position of the Zenanah bed ?

Answer. It is length-ways.

Question. When I was stooping as you have described, what was Lieutenant Goldney doing ?

Answer. On Lieutenant Torekler's first pulling out his first pistol Lieutenant Goldney was running away.

Question. Have you heard your Master say any thing on this subject, during the last eight days ?

Answer. Not during the last twelve days : I did before.

Question. Did he talk to you about it ?

Answer. It was twelve days before the quarrel took place. I have not heard any thing from my Master ever since it occurred.

Question. When you described Lieutenant Torekler as pushing the door, what door did you mean ?

Answer. The door of the outer room, which goes into the verandah.

Question. Had Lieutenant Goldney a pistol in his hand when Lieutenant Torekler first fired ?

Answer. No,

Question. Where were you in the room during the whole time Lieutenant Goldney and Lieutenant Torekler were together ?

Answer. I was standing behind Lieutenant Torekler, with reference to the Zenanah.

Question. Did Lieutenant Goldney give you any orders, before the 9th of August, not to admit Lieutenant Torekler should he call, or did you hear him give any other servant a similar order ?

Answer. No.

Question. Did your Master order you to bring him a pistol every night about this period ; And are you aware of his reason for so doing ?

Answer. He said if any letters come don't receive them, but give me information. I don't know his reason, but I got the order to load the pistol and put it under his pillow, I don't know.

Question. If there are three doors in the Verandah room opening into the Verandah which of the three did Lieutenant Torekler push against?

Answer. There are three doors, two always shut and one open, he pushed against the one farther from the Zenanah.

Answer. Did Lieutenant Goldney close that door before Lieutenant Torekler pushed against it?

Answer Yes.

Question. Did Lieutenant Goldney close it completely or leave it a little open.

Answer. Almost close.

Question. Where was it that Lieutenant Torekler offered the note to Lieutenant Goldney?

Answer. They were both near the threshold. Lieutenant Goldney inside Lieutenant Torekler out, in the Verandah, at the furthest door from the Zenanah.

Question. Did he observe his Master use any violence to Lieutenant Torekler?

Answer. I did not see him.

Question. Did your Master precede or follow Lieutenant Torekler into the Verandah?

Answer. Lieutenant Goldney followed Lieutenant Torekler, they were almost close together Lieutenant Goldney accompanied Lieutenant Torekler, he did not touch him

Question. Did you see Lieutenant Torekler seize Lieutenant Goldney?

Answer. No.

Question. You have said the chick of the door of the Zenanah room was down, was it broken by the ball?

Answer. When Lieutenant Goldney ran in, the chick fell down, fell off the nail with the jerk.

Question. Do you swear positively that Lieutenant Goldney had not his pistol before Lieutenant Torekler fired his first shot?

Answer. No.

Question. Where did Lieutenant Goldney get his pistol, and from whence?

Answer. He went into the Zenanah room, but I don't know whence he got it, after the first shot.

Question. What time elapsed between Lieutenant Torekler's shot to where Lieutenant Goldney went to get his pistol?

Answer. Immediately on the first shot, he ran and then Lieut. Torckler stooped to get his pistol.

Question. Where did Lieutenant Goldney snap his pistol, at Lieutenant Torckler?

Answer. They both levelled together, in the rear of the leaf of the door.

The foregoing evidence is read over to the witness, he acknowledges it to be correctly recorded and is ordered to withdraw.

The Court, in consequence of the indisposition of the Deputy Judge Advocate General, adjourns at half past two o'Clock till eleven o'Clock to-morrow.

7TH DAY'S PROCEEDINGS.

Cawnpore ; Thursday the 26th November, 1829.

The Court meets at eleven o'Clock pursuant to the adjournment of yesterday.

The President, Members, Deputy Judge Advocate General and Interpreter all present.

The Prisoner Lieutenant Torckler appears in Court.

The Deputy Judge Advocate General.

Mr. President and Gentlemen.

I beg to offer you my sincere acknowledgments for your kindness in adjourning yesterday at my request, and to express my regret for the inconvenience to which it must have put you.

The President addresses the Prisoner.

Lieutenant Torckler ;

Lieutenant Griffin has made a request, that in a case of such importance, as the present trial, he may be allowed, to avail himself of the assistance of Capt. Gray His Majesty's 44th. It does not imply any incompetency, on the part of Lieutenant Griffin, but proceeds from a feeling highly creditable to himself--If you have no objection theretore Captain Gray will assist.

Lieutenant Torckler acknowledges the Interpreter's consideration of him, with thanks, and begs to say he has no objection.

Brevet Captain Gray His Majesty's 44th Foot is called and duly sworn.

Lieutenant Salter Adjutant 4th Native Infantry is called into Court and duly sworn.

Examined by the Deputy Judge Advocate General.

Question. Did you place the Prisoner in arrest on the 9th August last?

Answer. I did.

Question. State whether you examined the rooms of Lieutenant Goldney's house, at Sultanpore Oude on the same day?

Answer. Yes I did.

Question. Whether in any of them you found a ball ?

Answer. I found one ball in the wall.

Question. Look at this plan of that house, and say whereabouts you found that ball ?

Answer. I have a memorandum of where I found the ball if the Court will allow me to show it.

Question. When was it made ?

Answer. A rough sketch was made at the time from which this was taken

Question. Now show that memorandum if you please ?

Answer. One ball lodged in the wall 4 feet 4 inches from the ground, and about 9 inches on the left of the door-way between the bay room and the inner room. The ball was extracted from the wall and given to the Major, who returned it to me on the 10th September. There was the mark of another ball having struck the Jelmil of the smaller room splitting one of the venetians, knocking part of it off, about 3 feet 4 inches from the ground, and about 3 inches from the door post. The ball was not found but part of the Jelmil picked up which is here.

Question. Where did you find the Pistol ?

Answer. I went to Lieutenant Goldney's who showed me a Pistol with the pan open in which was some powder, which adhered to it apparently from dampness, the Pistol was kept by Major Holbrow, and delivered to me on the 10th September.

Question. Is it now in the state it then was---and is it the same ?

Answer. Yes as far as it is about its being loaded.

Question. Now state precisely whether the injury done the Jelmil could have been done by the ball you produce ?

Answer. Impossible, for the ball was lodged in the wall.

Question. No, but it might have gone into the wall after breaking the Jelmil, for all that the Court knows---but were the directions of the two places such as would admit of one ball doing the two injuries ?

Answer. Certainly not.

Question. Then on your oath two balls must have been fired ?

Answer. I firmly believe they must.

Question. Now can you state distinctly, that your recollection of these circumstances does not solely depend on that memorandum ?

Answer. I swear distinctly to where one ball lodged, and where the other appeared to have passed.

Question. When you placed the Prisoner in arrest, did he say any thing, and what relative to the act for which he was imprisoned ?

Answer. I heard him say he was driven to desperation.

Question. Any thing else ?

Answer. I was outside placing the Sentries, and did not hear distinctly any thing else he said: It was previously to my going outside that he said he was driven to desperation---I returned to the room occasionally, and did not remain long enough to hear any thing that ensued.

Question. On what terms were Lieutenants Goldney and Torckler, on or about the 9th August ?

Answer. Certainly not on friendly terms.

Question. Did you know of any hatred or resentment existing between them ?

Answer. I cannot speak about the feelings of others. In my opinion they disliked each other.

Question. Can you assign any reason for that dislike ?

Answer. Difference of disposition, they had been engaged in disputes with each other.

Cross-examined by the Prisoner.

Question. Much, Lieutenant Salter, depends upon your evidence, and I therefore expect you will answer my questions from your own knowledge, and not from hearsay : Do you swear, then, from that certain and direct knowledge, that the ball you have produced was undoubtedly fired by me out of a pistol on the 9th August ; or is all the ground of your knowledge that some third party, told you so ?

Answer. I will not swear to any particular person having fired that ball.

Question. From your own knowledge also, will you swear that Major Holbrow returned you the identical ball, on the 10th September, which you had given to him a month before ; or do you rely on his assurance that he did so ?

Answer. I rely on Major Holbrow's assurance.

Question. Are you prepared to swear that it was actually a bullet which broke the venetian, and nothing else ; and also (from your own certain knowledge) a bullet fired by me on the 9th of August, or do you swear to only what some one else told you ?

Answer. The jilmil is there, it appeared to me that it was broken by a bullet.—(Jilmil produced)

Question. Describe the difference of situation of the broken venetian, and the part of the wall, whence you extracted a bullet ?

Answer. (The witness describes the position on the first walls, and jilmil on the opposite side of the inner room.)

Question. Look at this plan. Does it describe the position of the two bullets ?

Answer. Yes I think it does.

Question. Had I done any thing to Lieutenant Goldney himself on or about the time you have spoken of our mutual unfriendliness (that is, eight or ten days before the 9th of August) to produce that unfriendliness?

Answer. I believe Lieutenant Goldney considered himself one of the parties to whom a most insulting letter was addressed by Lieutenant Wilcox, to Lieutenant Wilkie, at the desire of Lieutenant Torckler.

Question. I want, if you please, a direct answer to my own plain question?

Answer. No.

Question. Is the Pistol you have produced, in the same state now, in regard to the priming on which it was when you first saw it?

Answer. It appears so, there seemed to have been more powder in the pan.

Question. What was the nature of the arrest in which you placed me first---without a guard or with one?

Answer. No I placed sentries round the house, outside at the outer doors.

Question. Can you upon recollection, affirm that you did not hear me say any thing after the arrest, as to who fired first?

Answer. I never heard it.

Question. Was I placed under fixed bayonets by a second order, or in the first instance.

Answer. By a second order in consequence of the serious nature of the Deposition, the bayonets were fixed, at first---instead of being placed round the house they were afterwards placed round the room I cannot state whether it was in consequence of the Deposition or the verbal statements that Major Holbrow changed his mind.

Question. Did you not tell me it was in consequence of Lieutenant Goldney's Affidavit?

Answer. I don't recollect having done so, it was very probable.

Deputy Judge Advocate General.---I wish to know whether the cross-examination of this witness is finished.

The Prisoner---I shall call him for the defence.

There being no further questions the witness retires---Shah Buddoo Kimmutgar in the service of Lieutenant Goldney is called into Court, and examined by the Deputy Judge Advocate General.

Question. What form of oath do you consider most binding on your conscience?

Answer. By the Koran.

The Witness is duly sworn.

Question. In whose service, and where were you on the 9th August last?

At Sultanpore Oude in Lieutenant Goldney's service.

Question. State slowly all you witnessed between your Master and Lieutenant Torckler on the 9th August last?

Answer. About eight o'Clock in the morning Lieutenant Torckler came dressed in a great coat, and the bearer informed Lieutenant Goldney that Lieutenant Torckler had come. Lieutenant Goldney upon this came outside---he had taken medicine that day---On Lieutenant Goldney's coming into the Verandah Lieutenant Torckler presented him with a note---Lieutenant Goldney would not receive it saying No, No, then Lieutenant Goldney three or four times called out for the bearer, after calling for the bearers Lieutenant Goldney retreated into the room, and shut the door too, and Lieutenant Torckler then shoved the doors and opened it and fired ' the Pistol, at Lieutenant Goldney ' Lieut Goldney then cried out for his pistols Where are my pistols? and retired into his bed room and took a pistol---they both presented their pistols at the same time Lieutenant Torckler's pistol went off---Lieutenant Goldney's flashed in the pan; this was the second fire of Lieutenant Torckler's; after this Lieutenant Goldney threw down his pistol and went into the room where the first fire took place, and they struggled and fell on the couch.

Question Had Lieutenant Goldney a Pistol in his hand, when Lieutenant Torckler first fired?

Answer. No

Question. On your oath did Lieutenant Goldney attempt to fire more than once?

Answer. Only once.

Question. Had he cocked it once before he did so again and it flashed in the pan?

Answer. He only cocked it once

Question Do you know what became of the note you have mentioned as being tendered by Lieutenant Torckler to Lieutenant Goldney?

Answer One of Lieutenant Goldney's kitmidgans took it to Captain Caley who was at Major Holbrows.

The note is admitted by the prisoner and read, admitted that it was left in the house of Lieutenant Goldney, (Vide page 29, D J A. G. opening address note dated 9th August 1829.

Question. Did you see Lieutenant Torckler's pistol's when he first came or what did he do with them to prevent their being seen?

Answer. Lieutenant Torckler was with a great coat on, I did not see any pistols in his hand.

Question. Did you see Lieutenant Goldney touch Lieutenant Torckler in any way whatever?

Answer. No they were walking up, and down, and Lieutenant Torekler was presenting Lieutenant Goldney with a note who would not receive it saying, No, No, No.

Cross-examined by the Prisoner:

Question. Where were you standing during the time you have mentioned?

Answer. I was standing in the Verandah near where the Gentlemen were. On seeing Lieutenant Goldney retreat into his Zenanah, I entered the room a little, Lieutenant Torekler was a little on my left on Lieutenant Goldney entering a room to my right, half the door of which was shut.

Question. Where were you, and where was I, when you say I fired?

Answer. Lieutenant Torekler was entering the door, and I was in the Verandah. On shoving the door open Lieutenant Torekler fired his first Pistol.

Question. Both parts of the door were not shut then by your Master?

Answer. Yes, he shut both of the Verandah doors.

Question. Did you ever state differently, that he shut only half the door?

Answer. Not of this door.

Question. Did you never state that the door your Master half closed was the one Lieutenant Torekler opened, and then fired.

Answer. No.

Question. At the instant of that first fire, did you see your own Master?

Answer. Yes, he was retreating into the room.

Question. Did the door I opened, require any violence to open it?

Answer. The door was not hooked to, it did not require violence.

Question. Did I throw, or burst, or pull, open any other door than that?

Answer. No.

Question. Did I go into the Zenanah room, or how near to it was I?

Answer. No, he did not go into the Zenanah, nor nearer than this, (about four paces.)

Question. Did I fire both pistols from the same position.

Answer. He retreated a little before firing the second on seeing Lieutenant Goldney's pistol?

Question. And where stood Lieutenant Goldney when he fired?

Answer. Lieutenant Goldney came forward to the door, with his hand resting on the left leaf, and presenting his pistol with his right pulling it to; he was in the room behind the door.

Question. Did you see, and if so explain, how I drew forth my first pistol ; did I stoop or stand erect ?

Answer. With the left hand he was holding a note, and the right hand was in side, but he did not stoop.

Question. Did I seize hold of Lieutenant Goldney, before the wrestle at the Couch ?

Answer. No, he did not.

Question. Are we to understand, then, that I offered the note while both Lieutenant Goldney and myself were in the Verandah ?

Answer. They were both in the Verandah.

Question. And that I was standing there when your master was called by the Bearer, and the former came to me ?

Answer. He was coming towards the house, Lieutenant Goldney went out to meet him.

Question. And I did not enter the bow room till the instant before I fired ?

Answer. That was the first time he entered the house.

PRISONER. I have no more questions at present.

The Deputy Judge Advocate, here asks the prisoner whether he has any more questions on the cross-examination ; the Prisoner replies that he has no more now.

Deputy Judge Advocate General. Mr. President---I beg to know whether the cross-examination ought not to be now finished, or an answer given to my question to the Prisoner. I refer the Court, (as the Prisoner has claimed to be tried by the rules of evidence in criminal cases,) to the practice of those Courts when a question like mine is put to the Prisoner, to the 32d Vol. How : state trial 282.

In the trial of James Watson for high treason A. D. 1817. The Attorney General required to know whether Mr. Wetherall one of the counsel for the Prisoner, could finish the cross-examination in the same day on which he commenced it.

Lord Ellenborough.—I rather believe that the Attorney General is right in insisting that if you begin with your cross-examination you should finish it.

Mr. Wetherall ---In answer to the Attorney General's argument, I would submit that as your Lordships lays down the rule of sitting till six or eight, if my examination should proceed longer than that time, it is not to be supposed that I should not be permitted to resume it tomorrow morning as my friend Mr. Gurney's examination has taken up already eight or nine hours.

Lord Ellenborough. Certainly ; you shall not be prejudiced.

Mr. Justice Bayley.---This is very near our time of adjourning.

"Lord Ellenborough.---I rather think that the Attorney-General is right in saying, if you begin you should go through."

Prisoner.---Reads the following passage from 1 Phillips Evidence, Page 274.

"When a witness has been once sworn to give evidence, the other party may cross-examine him, though he gave no evidence for the party that called him. And it is reported to have been ruled at *nisi prius*, that if a witness has been once examined by a party, the privilege of cross-examination continues in every stage of the cause; so that the other party may call the same witness to prove his case, and in examining him may ask leading questions."

Deputy Judge Advocate General.---In reply, reads the following passage from Practical Remarks on the proceedings of General Courts Martial by Major Vans Kennedy. Judge Advocate General of the Bombay Army.---Edition 1824---Page 81.

"But, as Courts Martial are bound to observe the rules relative to evidence, and the examination of witnesses, which prevail in Courts of Law, it is not in their power to divest a witness of the character which is ascribed to him by law. If, therefore, a Prisoner on his defence calls any one of the Prosecutor's witnesses, that witness immediately becomes the Prisoner's and the examination being taken in Chief, he is not at liberty to put to him such questions as he might have done on cross-examination at the same time the Prosecutor cannot; be deprived of his right of cross-examining the witness called by the opposite party; and this would lead to the Prosecutor's in reality cross-examining his own witness in direct opposition to every principle of Law."

"But although it is irregular for a Prisoner on his defence to call any one of the Prosecutor's witnesses for the purpose of cross-examining him on the evidence which he gave on the Prosecution; he is at full liberty to call any one of these witnesses, for the purpose of deposing to points which were not touched upon in the prosecution, and in this case the witness becomes in every respect the Prisoner's, and is no longer to be considered as a witness of the Prosecutor."

Prisoner. As you have now had the opinions of various legal writers, & several of the Judges, adduced upon either side; I beg to offer you the sentiments of one, to whom of course so much weight cannot be accorded, though his remark is here very much to the purpose:---I mean the Deputy Judge Advocate General who conducts this trial. On the trial of Sir G. Murray Page 98, there occurs the following observation of the Deputy Judge Advocate General, Mr. Larpent: "When I mentioned to you, that you were authorized to call the witness on your case, that makes him your witness, giving Admiral Hallowell a right to cross-examine and, perhaps, to put some questions which he cannot now."

And I find the following marginal remark; evidently opposed to the text, in the hand writing of Lieutenant Palmer.

(Marginal remark against this passage.)

" Vide Phillipps Law of Evidence 1. 274. where this doctrine is not at all supported."

Deputy Judge Advocate General.---A Judge Advocate is at liberty to change his opinions, as well as other men.

The Court is cleared and closed.

It is decided that he shall be called upon to answer the question.

The Court is opened and the decision read.

Prisoner. By order of the Court, I reply, that I have finished my cross-examination---I am ready at all times to conform to the wishes of the Court.

Re-examination by the Deputy Judge Advocate General.

Question. You have been asked about a retreat ; to what part of the room did the retreat, to which you have deposed take place---towards the door where Lieutenant Torckler entered or in a different direction ?

Answer. Not towards the door he entered.

BY THE COURT.

Question. Have you not had some conversation with any other servants of Lieutenant Goldney or any individual, about the evidence you were to give ?

Answer. No.

Question. Not with Jewyhir Bearer ?

Answer. No, nor with any one.

Question. Was there any other door opening out of the room, in the direction in which Lieutenant Torckler went back ?

Answer. Yes, there was a door open in that direction,---opening into the centre room.

There being no further questions to ask, the witness is ordered to retire.

Captain Caley 4th Regiment Native Infantry is called into Court and duly sworn.

Examined by the Deputy Judge Advocate General.

Question. I have a very few questions to ask you. Do you remember going to the Prisoner's house on the morning of the 9th August last ?

Answer. Perfectly well.

Question. For what purpose did you go ?

Answer. By the directions of the Commanding Officer, Major Holbrow, to request of Lieutenant Torckler to deliver up his pistols, or any fire arms he might have in his possession ?

Question. Did he do so?

Answer. Yes.

Question. State what fire arms he gave you?

Answer. A brace of pistols.

Question. Did he say he had more than one brace?

Answer. No, he merely gave his pistols, and I received charge of them.

Question. Now to the very best of your recollection, and as near as possible state at what hour you did go there?

Answer. I should suppose it was between eight and nine---say half past eight or a quarter to nine.

Question. Now state whether those pistols were clean, or had on them the marks of recent discharge?

Answer. I received them from Lieutenant Torckler, locked up and they were not opened in my presence.

Question. In what were they locked up?

Answer. In the case.

Question. Is there a cover to it?

Answer. The cover was sent afterwards by Lieutenant Torekler.

Question. To whom if any person did you deliver them?

Answer. I took them to Major Holbrow's the Commanding Officer, afterwards to my own house, as Lieutenant Torckler expressed a wish they should remain in my house.

Question. Do you know whether Major Holbrow opened them or were they examined in his presence?

Answer. I am not aware whether they were opened; certainly not in my presence.

Question. Did Lieutenant Torckler put them into the case in your presence, or were they in it before you went to his house?

Answer. To the best of my recollection they were in the case, he locked them up and delivered them over to me.

Question. State his general demeanour to you that morning?

Answer. When I went into his house to convey Major Holbrow's Orders with regard to his giving me up his fire Arms, he appeared a good deal agitated and said Desperation had driven him to it.

Cross-examined by the Prisoner.

Question. As you received what you say were my pistols locked up, and as the Box or case in which you thought them locked up, was not opened in your presence; can you swear, as a fact within your own positive knowledge,

that pistols were actually in that box ?

Answer. When I went into the inner apartment with Lieutenant Torckler the lid of the box was open, and I saw the pistols in the Box.

Question. From that sight of them could you swear to them again ?

Answer. No, I certainly could not.

Question. As I requested you to keep them, can you tell where they are now ?

Answer. When Lieutenant Torckler left Sultanpore, I went over to Major Holbrow and gave them over.

Question. Did you hear me say any thing about who fired first, while you were in the house with me ?

Answer. No.

Question. What was "it" I said, that desperation drove me to ?

Answer. What I mentioned just now was all that Lieutenant Torckler mentioned. When I went to his house and asked for his pistols he said Desperation, Desperation, drove him to it, to which I made no reply, asked him no questions, and no further conversation passed between us.

Question. Did I give up the Arms willingly, or did I resist you ?

Answer. Willingly.

There being no further questions to ask, the witness withdraws.

Major Holbrow 4th Regiment Native Infantry is called into Court and duly sworn.

Examined by the Deputy Judge Advocate General.

Question. Did you receive a case of pistols from Captain Caley, as the Pistols of Lieutenant Torckler 4th Native Infantry on or about the 9th August ?

Answer. Yes, I did.

Question. Did you examine those pistols ?

Answer. I did.

Question. Were they clean or had they marks of recent discharge ?

Answer. They were perfectly clean, but on taking off the locks, there was a small moisture of Gun-powder as if they were recently fired.

Question. About what hour of the day did you receive them ?

Answer. As far as my recollection serves me to the best of my belief, it was about eleven o'clock, on the return of Captain Caley from Lieutenant Torckler's Bungalow.

Question. Could they have been cleaned by any person in your house that morning, between the delivery of them by Captain Caley and your examination ?

Answer. Certainly, not.

Question. How were the pans and inside of the Barrels ?

Answer. They appeared to be perfectly clean.

Question. Did you receive certain letters, or notes, from some Officers of your corps on or about the 19th July, having reference to a demand of satisfaction by one Gentleman from another ?

Answer. I received some letters from Captain Wilton.

Question. What did you do with them, retain or destroy them, I mean ?

Answer. I destroyed them on the business being settled. I also received some from Lieutenant Wilcox which were destroyed.

Cross-examined by the Prisoner.

Question. Will you swear the moisture you spoke of could not have proceeded from any other cause, than the recent firing off of the pistols.

Answer. From what I saw, I believed it to be from the recent firing of the pistols, as it had a black appearance and particular smell.

Question. You say you saw the moisture in the pan, though you have already described the whole to have been externally perfectly clean, and that you only saw moisture on taking off the lock; explain where the moisture really was ?

Answer. On the plate of the part that fits in and close to the touch hole.

Question. Would "burning prime" only have caused that moisture ?

Answer. Any firing in the pan would have caused it ; I should have supposed so.

Question. Was it necessary that the pistol itself should have been fired off, to have caused it ?

Answer. No, it was not.

Question. Do you know if any copies of the destroyed papers were kept by any one ?

Answer. I have not seen any---I heard a copy had been retained by Captain Wilton---I have only heard of this since the business of destroying these papers.

The Court adjourns at half past three P. M. till twelve o'Clock to-morrow. The Deputy Judge Advocate General acquaints the Court, that he will by that time be able to say whether the Prosecution is finally closed.

8TH DAY'S PROCEEDINGS.

Cawnpore Friday ; the 27th November, 1829.

The Court assembles at twelve o'Clock pursuant to the adjournment of yesterday.

The President Members, Deputy Judge Advocate General---and Interpreters (Lieutenant Griffin and Captain Gray) present.

The Prisoner, Lieutenant Torckler, appears in Court.

Deputy Judge Advocate General.---Mr. President and Gentlemen.---I beg to state that I have closed the Prosecution.

Jewyer, Bearer, in the service of Lieutenant Goldney, recalled, and as the Prisoner was not aware on closing his cross-examination that he would not be allowed to cross-examine him again, he now with the permission of the Court recalls the witness, and continues his cross-examination.

He is duly reminded of his oath.

Question. When you held me, after the struggle on the couch, did I resist you at all?

Answer. No, he did not.

Question. Had you or I been in contact, or touched each other, before the struggle on the Couch?

Answer. I did not, the other men did touch the arm of Lieutenant Torckler.

Question. Were you examined on this subject before Major Holbrow?

Answer. Yes, I was.

Question. Did you give a different statement at any previous time, to what you have given in evidence to this Court?

Answer. No.

Re-examination by the Deputy Judge Advocate General.

Question. By whose orders, do you know, was it that the other man put his hand on Lieutenant Torckler?

Answer. Lieutenant Goldney gave the order.

Question. To do what?

Answer. He told him to turn Lieutenant Torckler out.

Question. Did he attempt or commence to do so?

Answer. Yes he put his hand on Lieutenant Torckler saying "What is it, What is it, Sir?"

Question. Where was this done, inside or outside the room?

Answer. Just outside the threshold of the door.

Question. Then it was after this that Lieutenant Torckler entered the house?

The question is objected to by the Prisoner.

Prisoner. I object to that question, and to any re-examination relating to the acts of the other Bearer; because this man's answer to my question as to the contact, did not include any one but himself; and if he added a remark not called for by the question, it was the duty of the Judge Advocate to have told the Court, it was not an answer to the question. Re-examination can only be called on

points sought for by the cross-examination, and not on matter needlessly added by the Witness.

* Deputy Judge Advocate General.---It is my duty to write the replies given by the Witness, and not to select particular parts of them, as those wished for by the Prisoner. The same objection was made on the trial of Major Matthews, in 1820, and the Judge Advocate gave the same answer that I have done.

The Court is cleared and closed.

* The question is over-ruled.

* Question. Was the order to turn Lieutenant Torkler out confined to that particular man you have specified, or was it addressed to you all?

Answer. "Bearer, turn him out," both Bearers were there at the time.

Question. Where was Lieutenant Goldney in so doing?

Answer. Just on this (the inner) side of the threshold; Lieut. Torkler was outside.

The Court having no questions, the Witness retires.

Deputy Judge Advocate General---I close the Prosecution.

Prisoner. I propose, with the Court's permission, to begin with my exculpatory evidence, and to reserve the address portion of the Defence till the last.

In consequence of my having received information (which if incorrect, you will, Mr. President and Gentlemen, who were Members at the time, be good enough to set me right upon, and forgive the mistake) that this Court established a precedent on a former trial, in respect to the non-admission of a description of evidence, which I shall require in the course of my Defence; I am naturally very anxious to ascertain whether the Judge Advocate means again to offer his then opinion to the Court as law, and consequently whether you will adhere to the above decision. In the case of Lieutenant McGrath, I understand the Court to have ruled that the Prisoner should not be allowed to call witnesses to prove that the principal one against him had, antecedently, admitted, in their presence, having certainly made the first attack, and that accordingly, the proof of the alleged fact was not recorded on the face of the Proceedings. Lieutenant Goldney, and one or two others, stand in just the same relation (on the principle of the rule) to me, in which Ensign Richardson stood to Lieutenant McGrath; and as I am prepared to prove that the Judge Advocate laid down the law in that case, erroneously, to the Court, I wish to ascertain before commencing my Defence, whether my evidence, on a similar point, is to be also prohibited; in order that I may enter my protest, for the purpose (frequently kindly explained to me by the President) of allowing Higher Authority to guard my legal rights, in the event of their being unconsciously infringed by the Court's determination.

Deputy Judge Advocate General.---I cannot conceive how the slightest analogy or reference to the objections I raised on the former trial can be perceived in this case. The question under trial is essentially different and there can be

no possible doubt that the Evidence proposed is strictly admissible. In Lieutenant McGrath's case my objection was founded on the words "engaging in a personal conflict." Had they been commencing a personal conflict, I said the evidence proposed would have been good. Here is a case of attempt to murder, or it is a case of self preservation. The evidence therefore of persons to say that the individual, whom this charge declares Lieutenant Torckler to have attempted to murder, acknowledged the aggression to have been on his own part, renders it then a case of self preservation, and the evidence that he did so cannot be rejected: but I conceive the question formerly decided by the Court, and the one now before it, to be as apart from each other as the Heavens and the Earth, and that there is no connection between them.

Letter from Lieutenant Goldney to Lieutenant Butler is here put in by the Prisoner and read. Vide Page. 97. No. 10. G.

The statement of Lieut. Goldney is here read, Vide Page. 95. No. 7. G.

Statement of Jewyher Bearer is here read vide Page. 96. No. 8. G.

Statement of Shaick Buddoo is here read vide Page. 97. No. 9. G.

EVIDENCE FOR THE DEFENCE.

Futteh Buksh, a Native Girl, being under the protection of Lieutenant Goldney is called into Court and duly sworn.

Examined by the Prisoner.

Question. Is there a chick to your Zenauah room door, leading into the bow room?

Answer. Yes.

Question. Was it up, or down, on the 9th of August between eight and nine in the morning?

Answer. Down.

Question. Was there any cloth on it?

Answer. No.

Question. Describe where the bed was?

Answer. The bed was length ways across the door-way, and about three paces from it; the pillow towards the Zenanah compound.

Question. Recollect once more, if on that particular chick there was no cloth at all?

Answer. Certainly none.

The Court adjourns at half past one till eleven tomorrow.

9TH DAY'S PROCEEDINGS.

Caenpore; Friday the 28th November, 1829.

The Court meets at eleven o'Clock pursuant to the adjournment of yesterday.

The President, Members, Deputy Judge Advocate General and Interpreter, Lieutenant Griffin 24th Native Infantry and Captain Gray, His Majesty's

The Prisoner, Lieutenant Torckler, appears in Court.

The Deputy Judge Advocate General.---I admit that Lieutenant Torckler, on the 8th August, ordered his Dawk to be laid at Sultanipoor, which place he intended to leave on the 12th of August last.

Ensign Sandeman, Interpreter and Quarter Master 33rd Native Infantry, is called into court and duly sworn.

Examined by the Prisoner.

Question. For about two years that you were at the same Station with me, he so good as to say what your opinion was as to my general line of life, and behaviour ?

Answer. Lieutenant Torckler led a retired life, I considered him a very correct moral character and an inoffensive man. The years were 1826 and 1827.

The Deputy Judge Advocate General and Court having no questions, the Witness retires.

Lieutenant Salter, Adjutant, 4th Regiment Native Infantry, recalled and reminded of his oath.

Examined by the Prisoner.

Question. I want you to state, whether the ball you extracted from the wall, appeared to have gone in, in a straight direction ?

Answer. I cannot speak accurately to that point ; if obliquely it was very little so.

Question. Did it appear as if whoever fired it had stood nearly opposite to the place of its entrance ?

Answer. Nearly so.

The letter of the 8th August is here read Vide Page. 91. No. 1. G. and proved by the Witness.

There being no further questions, the Witness retires.

Major Holbrow, 4th Regiment Native Infantry, recalled and reminded of his oath.

Examined by the Prisoner.

Question. To save several questions, I shall assume that Lieutenant Goldney, Shaick Buddoo his Khidmutgar, and Jewyher his Bearer, were examined by you on the 9th of August last, respecting the matter now before the Court.---did the Bearer declare to you that I pushed him on one side before I fired my first pistol ?

Answer. What the bearer said has been put on paper at the time, I do not recollect it.

Question. Did he say the servants parted his master and me ?

Answer. I don't recollect his saying that.

Question. If your written account of his statement contain these assertions, do you admit they were made before you ?

Answer. If it is in them, I will admit it

Question. Did the Khidm ugar state that the door, I pushed open, was the one which Lieutenant Goldney only half closed ; or will you admit that he did, on the terms of the last question ?

Answer. Yes, I will.

Question. Did Lieutenant Goldney assist, in any degree, in interpreting his servant's Statements to you ?

Answer. To the best of my recollection Lieutenant Goldney was not in the same room ; at all events he did not assist.

Question. Who was in the room, besides you and them ?

Answer. Captain Caley.

There being no further questions, the Witness retires.

Shaik Buddoo, recalled and reminded of his oath.

Examined by the Prisoner.

Question. Describe accurately the position of the two pillars, in the bow room with reference to the open door ?

Answer. The two pillars were between the doors, the centre door shut, is between the two pillars.

There being no further questions, the Witness retires.

Lieutenant Wilcox 4th Regiment Native Infantry recalled, and reminded of his oath.

Examined by the Prisoner.

Question. State the nature of the *Pledge* (and as to whether any condition was attached to it or not) which Lieutenant Wilkie gave you about not making your note public ?

Answer. The pledge was *unconditional*, Lieutenant Wilkie gave me his *word of honor*, that he would not make public use of that letter, whatever might be the consequence.

Question. Do you know whether or not, I was in the habit, during the rainy season, of wearing a cloak when I went from home ?

Answer. I have seen Lieutenant Torckler repeatedly in a cloak in the rainy season.

Question. Have you heard Lieutenant Goldney express sentiments of aversion towards me ?

Answer. Yes, repeatedly.

Question. Was not Lieutenant Wilkie desired by you to make known to the four Officers concerned, the contents of that letter ?

Answer. Yes.

There being no further questions, the Witness retires.

Assistant Surgeon Leese, 4th Native Infantry, is called into Court and duly sworn.

Examined by the Prisoner.

Question. Do you remember Lieutenant Wilson having been ill in my house, and of what disease?

Answer. He was ill of the small pox.

Question. Do you know whether I was in the habit of going in to see him?

Answer. I do not know--I saw Lieutenant Torckler one morning I think in his room, I am positive I saw him once in there.

Question. Did Lieutenant Wilson express himself annoyed at my going into his room?

Answer. Yes, on the morning to which I allude, he did.

Question. Did you tell me so at the time?

Answer. Yes, I did.

Question. After his complaint was ascertained, did the other Officers of the Corps visit him, till it abated?

Answer. No, I believe not, for a week.

Question. Were the Books and Newspapers sent to him last of all, for fear of infection?

Answer. I requested them to be so, and I believe they were.

Question. Have you & I been on good terms ever since October 1828?

Answer. We have been on *speaking* terms,

Question. Do you mean that we had no dispute during that time?

Answer. We never had any dispute that I remember.

There being no further questions the Witness retires.

Lieutenant R. A. Macdonald 4th Regiment Native Infantry, is called in to Court and duly sworn.

Examined by the Prisoner.

Question. This is a question not likely to do you any injury, or subject you to punishment I believe;---had you and I a duel at Loodianah?

Answer. We had.

Question. Two shots were exchanged, I think?

Answer. Two.

Question. Did I readily shake hands afterwards, and in other respects behave like a man of spirit and honour;---or did I evince malice?

Answer. He evinced no malice that I saw, he shook hands readily, and behaved on the ground like a man of spirit as far as I could see.

Question. Can you say whose hand writing this is?*

Answer. I can't swear to it, but I think it is Lieutenant Goldney's-- it is liker his, than any other.

Deputy Judge Advocate General.---I admit that Lieutenant Torckler did not know any thing about this Caricature till *after* the 9th August.

There being no further questions the Witness retires.

Lieutenant Salter, Adjutant 4th Native Infantry, recalled and reminded of his oath.

Question. State by whom to the best of your belief, you believe that word "Torckler" to be written?

Answer. I cannot swear--I have no idea by whom it is written, It is not like Lieutenant Goldney's general hand writing.

Question. Now look at that letter, and having seen that say by whom do you believe it to be written?

Answer. It is quite a matter of doubt, some letters are like, some unlike.

There being no further questions the Witness retires.

Lieutenant Wilcox recalled and reminded of his oath.

Question. By whom do you believe that word "Torckler" to be written?

Answer. I believe by Lieutenant Goldney, it resembles his hand writing.

Question. Have you any reason besides your knowledge of his hand writing for taking it to be his?

Answer. Yes.

Question. What?

Answer. He desired me not to show it to Lieutenant Torckler on any account.

Question. About what time?

Answer. About May 1828.

Deputy Judge Advocate General. I will admit that Lieutenant Goldney, on being requested by me in a note not to speak to his Native Girl, (the one Examined) that Lieutenant Goldney, wrote to me in return a private note promising to abstain most faithfully from alluding to the subject;-- this was about a month ago---it was the day after her arrival.

Jhow, Bearer in the service of Lieutenant Torckler, is called into Court and duly sworn.

Examined by the Prisoner.

* The word "Torckler" written at the foot of the Caricature, in connection with the scurrilous language admitted by Lieutenant Goldney, in his Evidence. Vide Page 71.

Question. If you remember my leaving home on the 9th of August last, state whether I had on a Native, or a European dress ?

Answer. English.

Question. Have you seen me leave home on other occasions with a cloak, in the rainy season ?

Answer. Yes this one, (a Military Cloak produced in Court)

Cross Examined by the Deputy Judge Advocate General.

Question. Did your master do this when it was not raining ?

Answer. It was my Master's pleasure, and he wore it sometimes when it was not raining.

Question. Was the 9th August a rainy day or was it raining when your Master left home for Lieutenant Goloney's ?

Answer. No, it did not rain that day.

Question. Do you remember if it was a cloudy morning, and threatening rain ?

Answer. In the evening it was, not in the morning ; a little, not much.

Question. Have you at any time here or any where else had any conversation with your Master about your evidence ?

Answer. No, not with any person.

There being no further questions the Witness retires.---

Moo-sahb. Tailor, in the Service of Lieutenant Toekler, is called into Court and duly sworn.

Examined by the Prisoner.

Question. Do you remember having mended a hole in each of the pockets of these trousers on or about the 9th of August last ?

Answer. Yes, I do, and having again undone it on the 11th August, and then was told by the bearer to undo it again, the rent was at the bottom of the left leg, and a hole in both pockets.

Question. Do you know if I wore these trousers on the 9th and if they were so torn when I put them on ?

Answer. Those were the pantaloons, and they were not then torn.

Cross Examined by the Deputy Judge Advocate General.

Question. By what did it appear to you the pantaloons were torn ?

Answer. I do not know how they were torn, but was told by the Bearer, Jhow, to have them sewn up immediately.

Question. And did you do so ?

Answer. I did.

Question. On the same day ?

Answer. Two days after the day I got them.

Question. Did he tell you why he wanted them immediately to be sewn up ?

Answer. He said his Master had gone out some where and had returned with them torn.

Question. Have you not been told to remember this circumstance in particular ?

Answer. Yes, my master told me to remember opening the pantaloons

Question. Where was this and when ?

Answer. In his Bungalow at Sultanpoor, when my Master asked me by whose order I had sewn them up.

Question. Did he personally tell you to open them ?

Answer. He did, he blamed me for sewing them up, and told me to open them again.

Question. Did he tell you his reason for giving that order and being angry with you for what you did ?

Answer. Yes, he said in an angry way, " why did you do so, they are to go before the Court Martial ?"

Question. And can you swear you did not open more than you had sewn up ?

Answer. Exactly what I sewed up I re-opened.

Question. And were you not told to remember this too, very particularly ?

Answer. No.

Re-examined by the Prisoner.

Question. When told to remember the circumstance of mending and re-opening the trowsers, were you desired by me ever to tell any thing untrue about it before any Court of Justice ?

Answer. No.

There being no further questions, the witness retires.

Juggernaut, Pundit, 4th Regiment Native Infantry, called into Court and duly sworn.

Examined by the Prisoner.

Question. Do you know of any Hindoo superstition, which confers a charm, or virtue, on the iron of a Pistol ?

Answer. I don't know, none in iron, but there is a charm in a Tavceez.

There being no further questions the witness retires.

Deputy Judge Advocate General.--I offer the following note, to be found in the first volume of the Nizamut Adawlut Reports, Page 357, as proof

that Natives do entertain the opinion I asserted.

Note appended to the report of the trial of Bhuwun Sing, for Murder Maiming and Wounding, at Benares. April 1, 1818.

Note. Having been ill for some days of the Cholera Morbus, the Prisoner took some intoxicating drug, as the best mode of removing this complaint, and went to sleep, and was awakened by his Mother who placed a sword by his side ; to this subject the note refers.

"The action of this mother appears at first sight to be unaccountable, but the Pundits say that it is customary for people who are ill to keep iron near their bodies, the origin of which they refer to the following passages in the Shaster. "From the malign" aspect "says D epika," of one of the nine mansions of the Heaven, men are affected with disease or other calamities. In order therefore to propitiate each of the nine mansions, let them keep, near their bodies, the following substance: on the malign aspect of the Sun, copper, of the Moon, a conch shell ; of Mars, coral ; of Mercury, Gold ; of Jupiter, Silver ; of Saturn, Lead ; of the Dragon's head, iron ; the Dragon's tail, royal Clothing."

Hence, say the Pundits, the vulgar, supposing their diseases to arise from the malign influence of the Dragon's head, keep iron near their bodies."

See also Page 383 of the same volume.

Prisoner. *Viva Voce* evidence, from a qualified witness, is better than any extract from a book ; and as Lieutenant Goldney gave a superstition of his girl, as the reason why the Pistol was kept under his pillow, I wish to show that it was not the *true* reason, nor the *most harmless* one.

Prisoner. There is one point not cleared up ; the witness says that both presented and pulled almost together, at the second fire ; and he subsequently says his master went behind the door to avoid the second shot, which passed the door while he was there. How then could we have been firing together ? I think the witness means the first fire as having been simultaneous, though it is not very clear ; but if the Court comprehend it rightly it is sufficient.

Mr. President and Gentlemen.

I should now wish for as much time as you can indulge me with, to prepare my Defence. I have taken up the least possible time in the examination of Witnesses, and of some who were summoned I have been greatly disappointed, though through no fault of mine own. But as the address, I contemplate, must unavoidably be a long one, and must also, as you are aware be copied from the rough draught I could not pretend to have it ready under ten or eleven days, but I must abide by the desire of the Court.

The Court accordingly adjourns at 2 minutes to 6 o'Clock P. M. till Thursday morning, the 10th December next, at 11 o'Clock in the forenoon.

10TH DAY'S PROCEEDINGS.

Cawnpore Thursday; 10th December 1839.

The Court assembles this morning at eleven o'Clock, pursuant to the adjournment of the 28th Ultimo.

The President, Members, Deputy Judge Advocate General, and Interpreters, (Lientenant Griffin, 24th Native Infantry, and Captain Gray, H. M. 44th Foot) present.

The Prisoner, Lieutenant Torckler, appears in Court.

Captain Mackinlay, Deputy Assistant Adjutant General, is called into Court and duly sworn.

Examined by the Prisoner.

Question. Are you, and have you been, since the month of March last, Deputy Assistant Adjutant General of this Division?

Answer. Yes.

Question. Do you, in that capacity, receive authentic monthly copies of Regimental Orders, from the 4th Regiment Native Infantry?

Answer. Yes.

Question. Can you inform the Court how many Parades for exercise were ordered, in that Regiment, during the Month of April and May last?

The President objecting to the question as apparently unconnected with the trial, desires the Deputy Judge Advocate General to read the charge which is done, and the Prisoner (through his friend) puts in the following remarks; *

Prisoner. The Court are aware that the Prosecutor has adduced the fact of my having been removed from my appointment, as tending to show that I had malice against Lieutenant Goldney who succeeded me. The loss of that appointment has been adduced in the Prosecution, and these questions are to clear it up, and show that it had no connexion with malice to Lieutenant Goldney. I have only two questions to put, on the subject; and as examinations of collateral matter were allowed the Prosecutor, I hope I shall be given a similar privilege.

Question admitted.

Answer. In these copies, there are two in the Month of April.

Question. Have you any reason to doubt the correctness of the Returns of Orders, made to your Office, for these two Months; and state whom they are signed by?

Answer. I have no doubt of their correctness; they were received thro' Brigadier Patton, and signed by Major Holbrow, and countersigned by Lieutenant Salter.

There being no further questions, the Witness retires.

Ensign Becher, 4th Native Infantry, is called into Court and duly sworn.

Examined by the Prisoner.

* N. B. The Judge Advocate having first declared to the President that he did not know why the Question was put.

Question. Can you state that, several weeks, prior to the 9th August last, I used to go to your house in my Cloak, no matter whether it happened to have been raining, or not ?

Answer. No, I cannot state as to time—Yes, before the 20th July.

There being no further questions, the witness retires.

Goordiall Sing, Sepoy, 4th Regt. Native Infantry, is called into Court and duly sworn.

Examined by the Prisoner.

Question. You are stated to have picked up three Pistols in Lieutenant Goldney's House on the 9th August last ; did you do so ?

Answer. One.

Question. You are stated to have given me two Pistols, on that day, in Lieutenant Goldney's house ; is that true, and if not, state what is ?

Answer. One, out side of Lieutenant Goldneys House ?

By the Deputy Judge Advocate General.

Question. How many times have you been asked about this Pistol before this morning by Lieutenant Torcaler ?

Answer. Once, in this compound.

There being no further questions the witness retires.

Prisoner. Mr. President and Gentlemen.

In asking the Court to permit the reading of my Defence to be postponed till Monday, it may be satisfactory to tell you the principal reason for the request being made. In order to save the Judge Advocate the necessity of soliciting an Adjournment, after hearing the Defence, for the purpose of enabling him to make either a Summing up, or a Reply, on whichever he may determine ; I promised that he should be allowed to look over my address, a day or two, if possible, before it was delivered, and upon that promise he gave me, on the close of the Prosecution, an opportunity of perusing the Opening Address. All my diligence failed in completing my Defence before yesterday evening, and as, therefore, if it were read to day, an Adjournment, perhaps beyond Monday, would be required by the Judge Advocate, the Court will perceive that by being so good as to grant that Adjournment now, it will accommodate both parties, without ultimately delaying its own final duty.

By Monday, also, I hope to receive an important Affidavit to attach to my Defence ; and for these joint reasons I shall feel grateful to the Court for a further indulgence.

The Court adjourns at 12 o'Clock, till Monday morning next, at eleven o'Clock in the forenoon.

11TH DAY'S PROCEEDINGS.

Calcutta Monday ; the 14th December, 1829.

The Court assembles at a eleven o'clock this morning, pursuant to the adjournment, of the 10th instant.

The President, Members, Deputy Judge Advocate General, and Interpreter, (Lieutenant Griffin, 24th Native Infantry, and Captain Gray, H. M. 44th Foot) being present.

The Prisoner, Lieutenant Torckler, appears in Court.

The Prisoner being called on by the President for his Defence, his Friend, Capt. McNaghten, with the permission of the Court, reads the following Defence.

PART, 2.
C o n t a i n i n g
The DEFENCE of LIEUTENANT TORCKLER,
and
The REPLY, or SUMMING UP, of the D. J. & G.
together with
The *FINDING*, and *SENTENCE* of the *COURT*, as
Published in General Orders.

If it did not relate to so momentous an issue, or did not flow from so bad a motive, or originate in deplorable and unpardonable ignorance, this whole tale of the gang of ruffians might very appropriately represent the labor of the mountain, and the birth of the mouse ; and surely a person better qualified to be the accoucheur at such a lying in than he who did officiate---the Judge Advocate himself---could not have been found throughout all this territory. He faltered at nothing in proclaiming the advent of the figurative animal ; he trumpeted forth its great size, and its terrible appearance ; he assured you it should be no abortive production, but a birth in every way worthy of the huge mountain that travailed ; and like a Mother over her first born, he rejoiced and exulted over the wondrous nativity. But either he chose a bad nurse to foster the offspring, or Justice had pre-ordained that it never should thrive, to contravene her, for it wasted into thin air in the unlucky arms of his principal assistant ; so that there was nothing left to show to those curious expectants who had not the good fortune to be present at the delivery. The Banditti connexion having been announced as one of two reports, each demonstrating a most malicious heart, the Court was no doubt anxious to get possession of the other, and it was not kept back. Accordingly it was proclaimed, in the absurd and malignant hyperbole I have noticed, that I was in the habits of practising with my pistols, at a figure representing an Officer of the 4th. and I certainly conceived from his own words that he meant Lieutenant Goldney ; and he farther alleged that this took place while I was in arrest, and that I had vowed the ruin of the individual thus bulleted in effigy. What was proved ? Why, that on one solitary occasion, I drew a charcoal shape on the wall, which struck another Officer, in the way that ludicrous likenesses will occur to the mind, as resembling the round, squat figure of Major Holbrow ; and that he and I both fired at the object, but not many times (though it was stated to have been "drilled through" in the usual style of exaggeration which obtains through the Address) and it did not appear that I had hit it at all ; nor that I expressed a syllable of a resolve to ruin either that or any other individual.

It happened, too, long before I was in arrest, and not, as was asserted during that period, a fact plainly to be seen from the evidence of the time by Lt. Wilson (who practised also, and was living in my house, before his illness) as compared with that of my having been in arrest, and making the latter period several weeks posterior to the former. Of the second Target there is no proof at all. Even the greatest degree of charity cannot attribute these shocking mis-statements of the Prosecutor to any other motive than to raise the feelings of his audience against me, and to warp the judgments of the Members at the outset of the case ; for there was no occasion to have made them at the time, and even if there had been a necessity for alleging something strong, or for doing any thing beyond defining and explaining the nature of the offence, its truth should at least have been previously ascertained. But the fact is that the assertion was made for the principal and headlong object of making me appear to you malicious and depraved ; and though it was of little use to have shown malice against Major Holbrow, on a charge for an attempt to murder Mr. Goldney, (but he has perverted the law to

make out the relevancy) he yet thought he might make a general impression on your minds against me, which could not fail to serve him in the particular case on which my fate depended. I shall show you, Gentlemen, how he perverted the meaning of the law referred to ; and I shall moreover show you that he has done so more than this once in the course of the Proceedings, though he knew you had to depend on his sole interpretation. He quoted a passage from Blackstone purporting that the malice necessary to make a killing murder, is not so properly spite or malevolence against the deceased in particular, as any evil design in general ; and he distorted this (I must say wilfully, for the situation he holds forbids me to say ignorantly) to make you believe that my having fired at a mark said to resemble a very different individual from the one whose name is contained in the indictment, was a proof that malice urged me on to seek the life of the latter ; whereas the true, and indeed obvious, meaning of the words an " evil design in general," is, that if a man were accidentally killed, while his slayer was in the prosecution of an evil design, the death would amount to murder, although no malice could be proved against the party killed, as the evil of the design which led to his death would be a sufficient proof of a malice that had been compassing an unlawful injury to some one or other. If a person went out, as not unfrequently private soldiers have done, for the purpose of killing, or maiming, the first man he met, though he might never have seen or heard of him before, and could not therefore, have any malice against him, there would be an evil design in general within the meaning of the legal definition ; but it is nothing less than a wretched distortion of that definition to say that if A had malice against B, and went to murder C, for a reason that did not concern B, his malice against the latter, satisfactorily demonstrated, or at all helped to demonstrate, that the killing of the other amounted to murder.

Had I, for example, killed Mr. Goldney ever so unintentionally, while I was endeavouring to kill Major Holbrow, the deed would have amounted to murder, though the former had been my dearest friend, or my closest relative ; but here was a point dragged in by the Judge Advocate, which had no connexion whatever with the offence, and which was moreover incorrectly described by him, both as to time and circumstance ; with a view to its aggravation ; and which he must have known, long before he came into this Court, he never could have proved, as he had chosen to depict it. The whole story of that pistol practice, when truly related, amounts simply to this ; that on procuring a pair of pistols I was desirous of trying them ; and accordingly fired four shots, certainly not more, and but on that single occasion, at a mark on the wall, never meant by me to resemble any one, and at which another individual joined with me in aiming. If there be harm in this, there is also harm in practising with foils ; at least any person might accuse another of so doing with the evil intention of committing future murder. To obviate a possible misconstruction of the foregoing term *procuring* a pair of pistols, it will not be deemed impertinent to the matter if I relate *how* I procured them. On the march of the Regiment, in route for Sultanpore, the pistols were put up one evening, to be raffled for at the Mess. As I was the last subscriber I got the only remaining ticket ; and the pistols on being thrown for, fell, chance fashion to me.

Even that piece of fortune caused appearances of ill nature against me from the disappointed speculators ; but surely there was nothing very heinous in my shortly afterwards trying the practical worth of the prize that I had won ; nor yet any thing indicative of an intent to murder Mr. Goldney, with whom I had but recently and voluntarily shaken hands in reconciliation, and whose return to the Regiment I had no cause to anticipate. But it does so happen that even had the Judge Advocate been as correct as he was wrong in asserting that this firing occurred in April, while I was in arrest, it would not have carried the slightest proof with it of my malice against Mr. Goldney ; for none of the causes then existed, which you have been led to understand must really have actuated me on the 9th of August. I had not lost, nor did I expect I should lose, my Staff appointment ; Mr. Goldney was not then present with the Regiment ; I had parted with him on good terms of my own seeking, though it has since appeared that *he* was far from cordial ; and I looked forward to a renewal of those terms when he rejoined, agreeably to his own pledge, which I had no reason to suppose he would endeavor to evade ; so that you see by no system of fair and honest reasoning could the pistol practice be connected with the Charge, supposing the facts concerning it had all been proved as completely as they were malevolently alleged. Alluding to the Charges I sent in at Loodiana, against Lieutenant Goldney, the Prosecutor asks, does a man preferring such a charge feel no resentment against his traducer, for falsely misrepresenting and calumniating his character ? I answer, to be sure he does, and to be sure I did feel resentment at that period against my calumniator ; but where will *malice* be thought most to lie ?---in the breast of the false calumniator, or in that of him who is rendered indignant by the calumny, and who takes the fair and open means of demanding a Court Martial in order to give a field for perfect investigation ? If my heart be as depraved as it has been represented, why did I not plan some deep personal revenge against Mr. Goldney at that very time, when he had done all in his power to traduce my character ; and when (as is still to be shewn) the Commanding Officer took his part against me in so partial a degree as to attract the notice of the Brigadier General Commanding the Division ? But if I did *not* evince such malice at the period of the offence, why should it be supposed that it actuated me fifteen months afterwards, when I had, long before that, sought to make it up, and when its having been again brought forward was not my act, but that of a combination of five Officers in order to give themselves an opportunity of insulting me in a manner that was contrary to all the received laws of honor and propriety by which Gentlemen are governed. The Judge Advocate must have been thinking of his own *chief witness*, when he described the possibility of deadly enmity remaining in the human breast, after a hearty reconciliation—for *my* shaking hands was not hypocritical—and when he enlarged upon the probable aberrations of a mind not under the influence of our holy religion, I am bound to suppose he could not have anticipated the reluctant confession of his prime supporter that he *had* avowed a disbelief in the Almighty, and in a future state of reward and retribution ; and *had* spoken irreverently of all that we deem sacred. Aye, and much farther than that has Mr. Goldney gone, in a mockery of the Gospels he did not hesitate to swear by ; and in his scoffs at *Him* through whose me-

diation alone, that blasphemy can be pardoned. But the subject is too revolting for me to have any delight in dwelling upon it more ; and I leave Mr. Goldney to make his peace with Heaven, as he best may, for the impious scorn with which he has denied it.

The Judge Advocate goes on to ask you, whether an Officer superseded for insubordinate conduct, has no reason to feel envy, hatred, and revenge against the person put in his place ? I hope not, Gentlemen ; I hope, and I am sure, that none of yourselves could so feel against the man who succeeded to a post that you had lost ; for if it were so, the world would be fuller than it is of deadly animosity ; as to every forfeited place there must be some successor, and consequently some one to be hated by one he had never injured. If, indeed, the machinations of your successor had been the means of undermining you, you might feel all the scorn and contempt that a man of honor feels for one of baseness ; and I can in no way account for the Judge Advocate's having advanced a proposition, so degrading to human nature in general, and to the open, honest character of British Officers, in particular, except by supposing the existence of a suspicion, or a conviction, in his own mind, that Mr. Goldney had plotted my removal, in concert with Major Holbrow, and that *therefore* I looked on him with eyes of great aversion. Having given, as I have said, a definition of malice from Blackstone, the Judge Advocate asks you, whether my having threatened to post the five Officers, on their refusing to make me the proper amends for an outrageous insult, does not evidence a part of that description of maliciousness ; but I can safely leave that question to be answered by every man of honorable principle. Such man has only to ask himself whether, on being grossly insulted, as I was, he would not demand the usual satisfaction ; and whether he would not publish the insulter to the world, in the event of that satisfaction being pertinaciously and contemptuously denied. Had malice, instead of a justly excited anger, been my fatal actuator, I should have taken less honorable methods to have executed its suggestions ; but, as the case is in evidence, it must be perfectly clear that I did precisely what every man of spirit would have done, so situated.

I have now said enough, Mr. President and Gentlemen, to demonstrate the *animus* with which the Prosecutor concocted his Opening Address. It lies before you in all its studied acrimony, and can be easily referred to as often as there is a doubt of my having given its scope and tenor correctly ; and it is totally without a plea whereby it can be excused, or in any degree extenuated. A hired railer could not have exceeded its expressions of malignity, nor the most injured individual given its language greater virulence. If he learned the facts, or as much as could be sworn to, from the mass of documents and witnesses by which he had been for several weeks surrounded, and yet come forward with such atrocious misstatements, of what can he be accused but of a corrupt and wilful perversion of the truth ; and if he did not enquire particularly and anxiously into the truth of the business, but came forward in ignorance to make guesses at my actions, and my motives, and my words, of what can he be accused, but of the bitterest hostility ; when it is seen how much he primarily heaped upon me, and how little he could succeed in substantiating by evidence ? Had he been ignorant, he ought to have been silent ; had he been thoroughly informed, he should have kept within the truth ; and in

neither case would my feelings have been agonized by his description, nor his own character injured by a groundless and spiteful defamation of mine.

To the law portion of his Address I shall have occasion to advert, at a future stage of the present argument ; and its manifold vilifications I am content to leave to the just appreciation of all impartial men. The unenviable spirit that plainly dictated it, will be seen to have governed him throughout the Proceedings. It made him throw every obstacle in the way of my acquittal ; it made him make repeated and captious objections to my cross-examinations, though I put not a single question which ought to have been hindered ; it made him more than once prompt his witnesses by sufficiently audible remarks before he put the question ; it prevented him from distinctly informing the Court what the true rules and practice of cross-examinations were, though he saw tokens of impatience when the drift of a question was not immediately perceived ; and he left me to read law to you, which he, as Judge Advocate, should have adduced himself, and of which he can hardly pretend that he was unaware of the existence ; it made him more than once endeavour to ridicule, and lead off a laugh against, interrogatories of mine, though I deemed them of such importance, that I might well and justifiably have rebuked him at the time by saying, with the persecuted frog in the fable—“ what is such sport to you, may be *death* to me ;” and if he take upon himself to deny occurrences that so many must have witnessed, I shall relate the particular instances complained of, and leave them to be judged by the world hereafter. He hesitated not to portray me as an assassin ;—am I to be silent on the motive of the portraiture ? He scrupled not to make his readiest witness denominate me a *liar* ;—am I not to repeal the indignity, and expose the malevolence ? He shrank not from covering me with gratuitous obloquy ;—am I not to shake it off, because it must necessarily when it leaves me be transferable to himself ? He paused not a moment to proclaim me a depraved, a revengeful, and a flagitious ruffian ;—am I to patiently sustain the reproach, for fear *he* should be proved to have spoken it malignantly ? No, Gentlemen, I am much more anxious about my character than my life ; and while that life is spared to me, I shall never sit in silence, and hear that character defamed ; nor abstain from flinging back the calumny in the teeth of the traducer.

Before entering upon that portion of the oral testimony which alone has relation to the matter of the Indictment, I am necessitated to refer to the documentary evidence ; but I shall be as brief as I can be in what I say respecting it. It was introduced, irrelevant as it was, and unconnected with the issue, for the purpose of magnifying the case against me ; and there ran the same unfair spirit through the mode of its employment, which I have already delineated as pervading the rest of the Prosecutor's conduct. But had I feared a scrutiny into all my former actions, I might have objected, and, in law, the objection could not have been overruled, to the investigation of any matter, unconnected with the *one* transaction that is stated in the Charge ; for it is a certain fact (though from the tenor of his Opening Address, and the mode in which the rest of the Prosecution was throughout conducted, it would appear that the Judge Advocate is ignorant that it is so) that there was no legal necessity for proving malice in the matter before you. Besides the desire which His Excellency may be supposed to have had, to save your time, and to be humane towards me, the Commander-in-Chief was perfectly

correct, in a legal point of view, in prohibiting all extraneous enquiry ; for the evidence relating to the transaction itself was all the Court required to satisfy it as to whether I had perpetrated a felony or not. Had my firing proved unlawful, and not in self defence, the degree of malice requisite to constitute it a felony, would have been implied by the law, from the wilful unlawfulness of the deed that I had done---without reference to any previous conduct of mine, of nine, of eighteen months, or two years' standing. If previous malice to the individual were necessary to be proved, a man could not be convicted, under the Statute, for a murder wantonly committed on a person he had never set eyes upon, nor heard of, before ; so that it is plain that your law adviser, Gentlemen, has led you into a most needless and irrelevant enquiry, and departed from the injunctions he had timeously received, for the unworthy purpose of embarrassing a Prisoner already sufficiently and cruelly distressed. I was, for my own part, most anxious that it should come forth, because I was anxious for the complete developement of my intercourse with him, who was virtually the joint Prosecutor, though he only appeared as the principal Witness. I accordingly applied for authenticated copies of it all, but was informed by the Judge Advocate that a considerable number of letters, which I knew to be important ones, were to be withheld from me by order of the Commander-in-Chief, while they were given to my Prosecutor for his exclusive information. Gentlemen, I was merely told that it had been left to Lieut. Palmer to give them or not, as he might judge them to be necessary, or otherwise, for my Defence ; and I was left to imagine that I must either go without the benefit obtainable from a knowledge of their contents, or lay open my line of exculpation to the Prosecutor, in order that *he* might decide upon how far I should require them. This appeared to me to be so essentially unjust, and I need not scruple to confess so unmerciful a procedure, on the part of the Commander-in-Chief, that while I could not doubt the Judge Advocate's assurance, I was driven to believe in the persecution of the High Authority on whose *fat* would depend my fate when these Proceedings came before him. I was horror-struck and paralyzed. My adviser knew not what course to take. He assured me he could not believe in such conduct on the part of a man of Lord Combermere's principles ; but when I pressed him on the subject of the Judge Advocate's plain affirmation, he owned he knew not what consolation to afford me. We wrote again to the Judge Advocate, to ask him whether he really meant to allege that the Commander-in-Chief had acted as he described, and he again informed us that he *had* and sent an extract from the letter of the Adjutant General of the Army which certainly went to confirm the assertion. The whole truth, however, came out at last, as truth usually will ; but it was not until the middle of the Prosecution that I fully ascertained it, in consequence of the Court's sense of justice having directed that the papers in question should be all given up to me, in spite of the Judge Advocate's opposition to the measure, which was manifest to myself up to the moment when the Court was closed. Well, on inspecting with my own eyes the letter of Colonel Fagan, I then, for the first time, discovered the essential justice of the Commander-in-Chief, and the *suppresio veri* of the Public Prosecutor. Gentlemen, the latter had disclosed to me but a portion of the truth ; for when he informed me that he had receiv-

ed orders to withhold the documents, he did *not* add, what was the fact, that the reason of my having been refused them was because His Excellency did not desire that the investigation of my case should take so wide and so irrelevant a range, and that *therefore* there could not be any necessity for my being put in possession of the documents. This ground for what had been otherwise a most cruel denial, the Deputy Judge Advocate did not think fit to communicate to me at all ; but he calmly determined on making use of the papers to aid the Prosecution, in direct opposition to Lord Combermere's commands, while he, at the same time, availed himself of those commands, to keep me unprepared upon that part of his intended system. This was all deliberately done too ; for the papers were referred to in the Opening Address, and Lieut. Goldney was subsequently examined upon matters, which the Judge Advocate knew, or ought to have known, could only be ascertained from the contents of the letters withheld. Those letters laid open also the manner in which I lost my Appointment, and as the loss of that Appointment was emphatically dwelt upon, as a ground for malice against my successor, I will leave it to any unbiassed man to say whether (with advertence to the letter, and the spirit, of the Commander-in-Chief's instructions) I was fairly dealt by in regard to the documents so determinedly kept back from my timely inspection. The Deputy Judge Advocate's last letter to me on the subject was dated only a week before the assembling of the Court ; and in it he declared that after a most attentive and anxious consideration of the question, he could not discover any cause for altering the determination he had formerly come to, of not furnishing me with the papers I demanded ; and he even extends the orders of the Commander in Chief beyond the words of the Adjutant General's letter, for he says that although His Excellency was only pleased to command him not to furnish those specified in the 10th and 11th paragraphs of my communication, yet as he gathered that it was his Lordship's intention that only the papers immediately connected with the Charge were to be furnished, he took upon himself to withhold several more.

Now he must either have paid little or no attention to the subject, or else he must have foreseen that from the very manner in which he meant to open and to conduct the Prosecution, the papers in question would, in all probability, have to be referred to ; and I ask this Court to say whether it was either humane or just in him, to deny such documents as had a *chance* of being useful to me, when the chance arose out of a system which he himself had determined to pursue ; while at the same time he suppressed from my knowledge the real intentions of the Commander in Chief, and did not communicate them even to the Court, till a period when the intelligence was calculated to render you impatient of an irrelevant topic, after he had made it tell in favor of the cause against me, and when he thought your impatience would most likely operate to limit the cross-examination.

It is plain that had I at once been informed of the Commander in Chief's wishes that the Court should confine itself to the occurrence laid in the Charge, I should have concentrated my efforts to the repelling that accusation, instead of having had to diffuse them over a space of about two year's expense ; but to have given that information would not have suited the Prosecutor's views ; for he had

determined that the enquiry should be made (he did not even give the Court, at the outset, the slightest power to choose, by then making known to it the desire of the Commander in Chief) as extensively as possible, and that I should be as little as possible prepared for it. On the other hand, had he told me of His Excellency's commands, either he would have had to have assured me that he kept the letters back, because he meant to follow those instructions ; or else to have given me copies of the letters and thus have rendered my acquaintance with them equal to his own ; neither of which alternatives would have answered his humane purposes, any more than the first one. He was to be fully prepared, but I kept as little so as possible ; and he recked not though the Commander in Chief should be suspected of throwing his High Authority in the way of a man's exculpation, in a case where even life and death was the stake depending. No part of this proceeding can be laid to the door of accident, for the whole is characterized by full deliberation ; and it is not the only instance of the sort I am necessitated to complain of, though perhaps I might have kept back both remonstrances, had the subjects occurred with a private Prosecutor, instead of the Officer on whose construction of the law, as applicable to my cause, so much will yet depend ; and proofs of whose generally hostile conduct cannot but render the Court more than usually cautious in receiving such of his legal dicta as may make against me, for incontrovertible doctrines of the real law of England.

The second occurrence, in respect to letters, related to two, that I had summoned from the person in whose possession they were, as evidence for my Defence ; as they had been written by Lieutenant Goldney, soon after the transaction embraced by the Indictment, and I do not hesitate to pronounce the Judge Advocate's conduct in regard to them as totally unprecedented, and quite unwarrantable.

For the just and lawful purposes of my Defence, I demanded them from the Officer to whom they had been sent, through the proper official channel of the Deputy Judge Advocate ; giving the holder of them (for his personal convenience) the option of delivering them up in the manner specified above, or of attending the trial as a witness of their purport. He chose to forward them, in the readiest and most polite way, by the earliest opportunity, and the Judge Advocate received them on the 15th Ultimo. Instead of having rapidly transmitted them to me, he perused and copied them, and detained them till the fourth day (the one preceding your assembly) nor forwarded them, even at that late hour, till I had publicly requested that they might be sent.

As the same principle of fairness runs through all the rules which appertain to evidence, I submit that the Judge Advocate has not one *iota* more right to make himself master of such defensive documentary testimony as may be summoned, and sent, through himself, in a very different capacity from that of a Prosecutor ; than he would have to call a personal witness for the same side, on his arrival for that purpose being made known at his Office, and sift him thoroughly enough to obtain a knowledge of all the exculpatory information he might be able to give.

Although the rules of the Service, and the practice of Martial law, render

it imperative on a Defendant to make known to the Judge Advocate who his witnesses are, in order that they may be duly directed to appear (one of the many disadvantages peculiar to a Military Prisoner) the law does not sanction the least more benefit, than what is unavoidable, being derived by that Officer from the named necessity, for his own assistance in the subsequently assumed character of a public Prosecutor ; and this provision applies as well to written as to oral testimony.

When the accused requires the former kind of evidence, existing in a public form and in a public Office, the Judge Advocate has, of course, a like opportunity to peruse, and probably a like right to possess it ; because copies are all that are, at any rate, given, and the keeper of the originals may be authorized by his superiors to give attested copies to one party as well as to another ; but in regard to private letters, like those now in question, the Judge Advocate has not the shadow of a right to investigate their contents, nor to the least knowledge of them, until they are produced in Court, and he thus entitled to cross-examine upon what they may disclose.

This is the *rule* of both civil and military Courts, and the present is the only *exception* I have ever heard of that can be brought to prove it. It placed my Prosecutor on a footing of equality with myself, and gave him time and means to prepare his rebutment, which he never *could* have obtained in that character alone ; and which he never *ought* to have obtained in an official capacity, that binds him to act as fairly by the Prisoner as he must by the Crown.

An accused is at best but too much in the power of a Prosecutor, when the latter is at the same time the law adviser and the guide of the Judges in every point disputed by the parties (and this without the least ill intent on the Judge Advocate's part,---but springing solely from the anomalies of his Office) and it were a most unmerciful rule to give him indirect, as well as legal, methods of increasing that great superiority. I lament very sincerely the necessity that exists for a representation of the present nature ; but the Court will easily perceive that, while I owe to myself the duty of protection from all unauthorized efforts on the part of the Crown to compass my conviction ; it is not my fault, however much it may prove my misfortune, if those efforts should be deliberately made.

Although I have considered it indispensibly necessary to bring forward in this open manner (while there is opportunity for my Charges being met, as they best may) the whole of the public Prosecutor's conduct, which I looked upon as tending to the detriment of my cause, or the laceration of my feelings, and at the same time as not warranted by the nature of his official duty, nor the desire of those who appointed him to perform it ; I shall be but too happy if he can cast from his shoulders the blame with which I have burdened them, and assure the world that his motives were not vindictive. I have not stated any thing that did not actually occur, nor any thing that *did* have I wilfully exaggerated ; but my family and my friends are looking anxiously for my defence ; and it may not be that I appear to them to have passively submitted to what I deemed persecution, lest (accused as I stand here) my forbearance should be attributed to a latent sense of

guiltiness, which made me tremble at doing aught that might lead to deeper scrutiny. All my charges have been openly exhibited; and, while I know that my assertions cannot truly be denied, I am aware that I may have erred in the imputation of the motives,---and I hope I have so; for, at this present speaking, I cannot believe that I have any longer a Prosecutor; and, the Trial once ended, I shall be sincerely desirous to forget that I have ever had one.*

Having laid open the process which obtained respecting two portions of the documentary evidence, I shall leave its propriety to be judged of in the proper quarter, and proceed to comment, with all possible brevity, on the principal parts that have been dragged into the fore-ground in order to criminate me. It commences with a correspondence between Mr. Goldney and myself, on the subject of an order given by him to a Tindal belonging to my Establishment, as Quarter Master of the Regiment. It will probably be thought to have been indelicate at the least, on the part of Mr. Goldney to have at all interfered with any of my Department, considering the very distant terms on which we were at the time. Those terms, I can assure the Court were not the effects of any fault, or aggression, of mine; for if such had been the case, you may be sure the opportunity for asserting it had not been over-looked, by those who asserted so much without any proof whatever.

I shall not, in explanation of those terms, enter into a detail that could prove of no credit to Lieutenant Goldney, but I am compelled to state generally (if I do so erroneously his remedy is open to him) that for some time before that, he had been distantly treated by several Officers of the Regiment, in consequence of a reprobated part of his conduct in a culpable transaction in which another witness against me, Mr. Slicer, was the principal performer.

Mr. Goldney had also behaved with great vulgarity in a visit he had paid at my house, during my own absence but while my Mother and Sister chanced to be at home. Their description of his rudeness (which consisted in his throwing his feet on the Table, and other similar acts of mis-behaviour) annoyed and disgusted me to such a degree that, while I had no desire to openly quarrel with him, I determined to drop his society as gradually as I could, and in the end succeeded in doing so entirely. Thus we were situated when the report was made to me of his having given, or sent, some orders to my Tindal; and as I did not desire to lay him up to the Commanding Officer, with out a certaintg from himself the correctness of the report (a line of conduct which contrasts vividly with that followed by him on several occasions, such as the order to lop his trees, which he chose to credit on the bare word of his gardener; his refusing to visit me because of an *ex-parte* statement on his rejecting at Sultau-pote; and one or two others in evidence before you) I addressed him a formal, but a perfectly civil note, requesting the degree of information that I alone should have considered it fair to have received. His extremely rude answer being before the Court, I shall not offer my opinion on it, rather than that it irritated me much, and called forth a rejoinder which I have displayed. When a dispute once begins, it almost always happens that

* The Prosecutors, Esqrs. would stand to undeceive me, and in after conduct was such as to render it impossible for a charitable construction to be put on that which had preceded it.

both parties pass the limits of strict propriety in the course of it; but when it afterwards comes to be judged of by uninterested persons, it will be considered which party gave the first offence and he will doubtless be blamed in a greater degree than the one whom that very offence succeeded in urging beyond the bounds of ordinary patience.

Although Mr. Goldney tried to make you think, by one of those frequent sneers which intermingled with his testimony, that I abstained from settling the difference, thus occasioned, by a duel, for fear that my own person might be injured in the contest; yet a Court composed as this is, will find no difficulty in allowing the evidence of Lieutenant Macdonald to over-balance the conjecture of a most hostile witness; and I shall therefore trust to receiving credit from you, Gentlemen, for a better motive than the one imputed to me, for having transmitted the correspondence to the Commanding Officer.

Whether Major Holbrow acted in the affair with straight forward; and evenhanded, justice, or not, is for others to determine. I thought he did not; for he reprimanded me for my second note, and never reproved Mr. Goldney for the one which drew it forth. If I struck a man two blows, who had causelessly first of all struck me one, I should not think it quite fair in an arbitrator to blame me exclusively; and this is just the case in question, supposing even that my second note was rather more severe than the first of Mr. Goldney rendered absolutely necessary.

A running commentary upon only one or two of Major Holbrow's letters of reference against me, will abundantly evince the feelings under which he must have written; and the little chance I had of having my case dispassionately represented to higher authority by one so prejudiced. As I shall not follow the example of the Judge Advocate in recording allegations incapable of proof, I shall make only such comments on the letters in question, as are amply borne out by the general correspondence; and then leave Major Holbrow's eulogium on Lt. Goldney to be estimated with reference to his feelings towards me, as apparent throughout the whole of his observations. In the first paragraph of his letter of the 3^d May 1828, referring the dispute to the Commandant of the Station, he says it might have been avoided altogether, had we not allowed our feelings of private, personal pique, to enter into the discussion of matters connected with our public duty; and yet in a previous letter of the 5th of the same month, he had reprimanded me, for not having settled the matter privately and thus brought into still farther play the very feelings he soon after so loudly reprehended. In the next paragraph he says that in consequence of the tone and style of my note No. 4. * (never saying a word about the style of the notes which produced it) he directed us both to attend at his quarter and there intimated his desire that no farther private notice should be taken of the business. This expression, *intimated my desire* is much less mild to screen Lieutenant Goldney; for Major Holbrow's words to us were "Gentlemen, it is my *strict orders* to you both, that no farther private notice &c." but Lt. Goldney disobeyed those orders, in having, as the evidence tells you, send privately the Copy of a gross and insulting statement through his friend Lieutenant Salter; and of that disobedience no serious notice was taken upon my representing it.

In his 3d Paragraph, he says he did not allude to the improper style of my first note, as he concluded that the opinion he had delivered would be looked upon as applicable to the whole affair; yet this assertion is made in the very face of his letter of the 5th of May, wherein he says, expressly alluding to my first note, that "the very unconciliatory tone and style in which it is couched, could scarcely be expected to elicit any other answer than what Mr. Goldney sent to it."

Now Gentlemen, as the note is before you, you are fully enabled to judge whether it did, or did not call for so rude a reply, and consequently whether the character here given to it by Major Holbrow is a fair character or not; or one that flowed from a dispassionate and unbiassed judgment between the parties concerned. In the next paragraph he says that Mr. Goldney forwarded him the original of the statement above alluded to, which he could not consent, on account of its improper style, to retain as a Regimental record, and therefore returned it in the hope that Lieutenant Goldney would so far meet his wishes, as to withdraw the Copy, he had forwarded to me. How this *could* have been his hope, I am at a loss to imagine, for his letter tells Mr. Goldney, virtually, to keep the document by him (although his having sent it was a direct disobedience of a positive order) by saying that "application would be made to him for it, should a future opportunity offer for doing so," or words to that effect. "In his answer" (Major Holbrow goes on to state) "I am sorry to say he declines to comply with my request, and follows it up with another letter, which, setting aside the very wrong view which he takes of the steps already taken, is far from being written in that respectful tone and spirit, which from an Officer under my command, I had a right to expect." I beg of you, Gentlemen, to contrast the mildness of these remarks, with the severity of his language when applied to me. Here was Lieutenant Goldney disobeying the Major's positive injunctions, in the first place, by sending me the statement; declining, in the second, to comply with his request that it might be withdrawn; writing an avowedly improper letter, in the third, in reply to that request; and not compelled, after all, to atone for his conduct, by recalling and apologizing for a paper which Major Holbrow deemed unfit to be preserved as a Regimental record. Only, I say, let this mildness of rebuke for those several offences be contrasted with the language employed, but two days after, to describe my conduct, merely for not withdrawing the Charges I had sent in against Mr. Goldney, on account of the very statement *he* had persisted in not recalling. "I have learnt," writes Major Holbrow "not to be astonished at any act of disrespect which this Officer may evince towards those placed in authority over him" (this was simply for persevering in my charge against Mr. Goldney to clear my character from the aspersions contained in his statement) "and I consider I should be wanting to myself and the situation which I hold, were I not here to state that Lieut. Torckler's conduct towards me, since I have assumed the command of the Regiment has been in many respects the opposite to that which I had a right to look for from a Staff Officer." Here he wanders from the point, to make a general accusation, but specifies no act to illustrate it; and after having allowed Mr. Goldney to brave him, in insulting me, he declares he would have been wanting to himself and his important situation, if he did not complain of me generally, as well as particularly; and all this merely because I wanted Higher Authority to vindicate my character,

when I found that Major Holbrow could not, or would not, make my traducer do me justice. "Lenity," he adds, "towards Lieutenant Torckler, I consider misplaced," and he ends by declaring he will take the next opportunity that presents itself, to hand me up to the Commander in Chief. Such was the difference of his tone when applied to me, and to Lieutenant Goldney; and it is accordingly no wonder that the latter went uncensured for his first note to me, which caused all the mischief, until the affair came under the notice of Brigadier General Adams, who at once perceived the unjust omission and cast a proportion of the blame on Mr. Goldney accordingly.

On a subsequent occasion, viz. on the 11th of October in the same year, Major Holbrow again referred my conduct to the Brigadier General, in a letter as strongly worded against me as were any of the former ones; but as it related to some Mess affair, in which I considered myself very unjustly and illiberally used; I shall not detain you with a minute detail of it; but merely observe that I gained my point; and that the Brigadier General was not swayed to give it against me, by the violent letter which had brought it to his notice; but judged it on its bare merits, and decided it in my favor; though that decision *was suppressed from my knowledge, and subsequently from that of the Commander in Chief, to whom Major Holbrow thought proper to transmit his own letter, without that reply, that the former might thereby more surely tell against me, as it naturally did in his Lordship's estimation. I now hasten on to the portion of the written evidence, which I have already explained how the Judge Advocate wished to keep me from perusing; even after Mr. Goldney's evidence so markedly referred to it. That testimony, accused me of having raked up the ashes of the dead, in a most unmanly remark on the late Mrs. Holbrow; yet when the passage came to be read to the Court, there appeared no remark whatever about that deceased lady, but merely an expression of disgust that her Husband should so soon after his loss, have conducted himself in the way that I described, and which description contained nothing but the truth, as the evidence itself to a certain extent demonstrates, and as I can prove entirely when called upon to do so. The term raking up the ashes of the dead, which is always taken to imply the slander of their memory, was first employed by Lieutenant Goldney in one of the two letters which I have already told you, the Judge Advocate copied and detained. He again, in the evidence in chief, used the term "raked up" in allusion to that, and other parts of my public correspondence as he subsequently, on a cross-examination, was compelled to admit; and he latterly applied the terms "unfeeling" and "ungentlemanly" to describe (before he knew that the Court would have the original produced) the only allusion I had made to Mrs. Holbrow's decease;---though that allusion was not couched, nor meant to be clothed, in any terms of disrespect to her. Those descriptive phrases evince the consistent determination of the opposite side, to exaggerate all my conduct by unscrupulous hyperbole; and they have tinged with equal deepness, the chief witness's testimony, and the opening address.

I complained of Major Holbrow's gambling with those under his command; and of his enduring language, on such occasions which was calculated to disgrace him; and both accusations appear to have been true, though he endea-

voired to qualify them, or rather the circumstances embraced by them, as much as ever he could. Next morning the improper language was, he said, explained away; but while that very assertion admits its having occurred, you cannot fail to observe that a private explanation, especially in such a case, was scarcely sufficient for so public an insult; and that the matter would most likely have been pushed much farther, if Major Holbrow had thought his own share of it would have borne the scrutiny.

The accusation of Mr. Goldney that I carried on a system of espionage in the Regiment, as it has no relation to the Charge, and was merely included in his answer, with a view to exaggerate, I shall not even condescend to deny; as to do so would bespeak a greater respect for the oath of that Officer than, after all his breaches of it, I can possibly entertain. But as Major Holbrow in a bitter, and ill grounded, letter of the 15th of June, *included something like the above insinuation, and affected to urge enquiry into his own conduct, though to obviate that, he suggested the safer plan of removing me from the Regiment towards the conclusion of the self same letter; it will suffice for me to say that I was ostensibly as anxious as, and in reality much more anxious than, Major Holbrow for a full enquiry into all these affairs, and that the Commander in Chief's not having thought fit to grant it to the Major's solicitation, could not have been caused by any backwardness of mine to meet the fullest scrutiny. The Spy system existed, undoubtedly, but if it were all investigated, it would appear that it was I who was spied, and my every action noted down and remembered, for future operations, by the opposite party in that very Regiment, of which Major Holbrow hesitates not to boast the unanimity, though there were a frequency of duels and quarrels among the Officers in which I had no personal concern whatever.

As to his having gambled, I stated the simple fact; and the following General Order will furnish the commentary.

Head-Quarters; Calcutta, 25th September 1820.

"Instances of gambling in the army having come within the notice of the Commander in Chief, his Lordship earnestly calls upon Officers at the head of Corps to use their active exertions in discouraging so pernicious a practice.

It is hereby enjoined as a duty on each Commanding Officer to report to the Commander in Chief any case where a superior Officer may game with Subalterns. An Officer of any standing ought to feel himself called upon, by every principle; to warn the inexperienced against the fatal consequences of the practice, instead of endeavouring to strip a young brother soldier of his scanty means, and reduce him to penury, if not to irremediable ruin."

Lieutenant Goldney's testimony farther accused me of having declared (falsely, of course, and all else disreputable) that Major Holbrow had "artfully and maliciously" contrived to get me into a predicament; and he chose to give that (for the first time) in Court, as one of the reasons for my rejection, by his party, as the second of Mr. Wilcox.

A plan, and a short tale, shall make that circumstance clear to every one. On parade one day in the month of either February or March, I directed the Adjutant, who was my junior Officer, to keep on my left, in rear of the column,

while passing in review: I know now that this was an error, but it was the practice in many Regiments, and was submitted to on this occasion, because the Commanding Officer did not know otherwise than that I was correct. Some time after, however, the Adjutant procured, or discovered, an order to the contrary effect, and communicated the same to the Commanding Officer. A common sense of fairness would have suggested the propriety of acquainting me with what they had just learned themselves; but, instead of that, a Parade was ordered, for the very purpose, as I will show you, of getting me into a scrape, in consequence of the order which it was anticipated I should still give to the Adjutant to keep upon the left, agreeably to the course that had formerly been pursued. All turned out exactly as had been planned for; I got a severe reprimand from the Major on Parade; the matter was referred, and having used, in my indignation on learning the plot, the words artful and malicious as descriptive of the Adjutant's conduct (as is plain from the paragraph) in particular, I was ultimately removed from my Staff appointment. Till the day it was referred to in this Court, I never knew the terms in which Major Holbrow had portrayed the transaction; but I then found, from a perusal of his letter,*—one of those so determinedly held back by the Judge Advocate and Prosecutor,—that he admitted his ignorance of my having been originally in error, his subsequent attainment of the requisite knowledge and his having abstained from the communication of that knowledge to me. His assigned reason for this last named omission was his fear of my litigious character; just as if the information, openly and timeously given, would not have been the very means of obviating litigation, because I must and should have deemed such authority decisive. But that I was intentionally kept in ignorance till I had sufficiently committed myself, is demonstrable by a number of concurrent circumstances. First, had the intention *not* been as I suspected, Major Holbrow might have said to me, before falling in, (as one expression in his letter to the Brigade Major on the subject, purporting that he thought it would answer every purpose if he told me of the order *on parade*, was calculated to make it be believed that he did) “Mr. Torckler, I have just discovered that the Adjutant's being junior to the Quarter Master has nothing to do with his post upon Parade, and therefore he will in future take his place on the right, in marching past.” Had I then demurred, there had been ample room and cause for severity; and again, when I ordered the Adjutant to the left, he himself might have replied “you are not aware of our having met with an order which makes the right my place,” and then the matter would have stood over till the Major had been referred to. But neither of these chances of escape (tardy as they would both have been, for I should, in justice, have been at once apprized of the fact) were given to me; and as there had been no Exercise Parade for many weeks before that, and not one for at least two months after it, is not the inference irresistible that it was ordered for the sole and very purpose of getting me into the fatal predicament which was deliberately planned? I examined the Regimental Order, as they are in Captain McKinlay's Office, in concert with the Judge Advocate, to ascertain this fact, and he knows that I have stated it correctly; for although one Parade appears to have been ordered, about a fortnight before, yet a fall of rain, or some temporary cause which I cannot exactly recollect, prevented its taking place; but if it *had* occur-

* *Vide* Appendix No. 7 C. Page 65.

red, the expected involvement of me ; in the thus postponed difficulty would of course have occurred also, so much the earlier, and with equal certainty. There is a point of explanation I must in this place give. To make more officially certain of the fact, I requested the Judge Advocate to procure from Lieutenant-Colonel Simpson, now Commanding the 4th Native Infantry at Sultanpore, an authentic return of the number of *Exercise* Parades which had been ordered in April and May, and that return exhibited four in the month of April. Now either it, or the one proved by Captain McKinlay, the Deputy Assistant Adjutant General of the Division, as having been lodged in his Office by Major Holbrow, must be false ; and I therefore only hope that the Court will accept of the latter as the correct one, as not only does my own assertion corroborate it, but it was originally sent in, in the usual and regular course of Major Holbrow's duty, and with no probable view to its present application.

If then, it be decided that I ought *not* to have been, as a Staff Officer, informed of the orders as soon as it was known to the Commanding Officer and the Adjutant (and when the point had been before disputed, and yielded to my opinion) I must of course submit to being thought the only blameable person ; but if the opposite course be thought the fair and proper one to have been adopted, then shall I stand justified for the part I took in it, and my description of the circumstance be held to be authentic. Yet, it was for that I was deprived of my Staff appointment, and it has here been dragged in to assist in depriving me of my honor and my life. I had no opportunity of defending myself before, for I was ignorant of the manner in which I had been misrepresented ; and as the Commander-in-Chief did not, of course, think of doubting a Commanding Officer's statement, a certain portion of which was correct, I was punished upon that inaccurate representation. The words " artful and malicious " apply especially to the Adjutant who had the charge of the Orders, and who was directly answerable for their proper circulation ; and a reference to Sir Sanford Whittingham's letter,* which forwarded Major Holbrow's to the Commander-in-Chief, will show you that the Major-General took this view of them likewise ; yet Mr. Goldney applied them, on his oath, exclusively to the Commanding Officer. Without some little explanation from me, the Court can have no adequate conception how greatly I was misrepresented throughout this whole affair.

In his letter of reference to Brigadier Patton, Major Holbrow states that another reason (besides his fear of litigation) why he did not inform me of the order *before* parade, was that he thought a verbal communication would have sufficed *upon* Parade ; and so it doubtless would ; but why then was it not made before we had fallen in, as he knew he had theretofore countenanced an opposite practice ? The motive is plain,---that a timely communication would have saved me from an error. He goes on to state, that when I had told Mr. Salter to go to the left, the latter replied " the left is your place, Mr. Torckler," but without giving me any authority for his resistance of my order. The answer was not a proper one to make, in that unexplained way, and I therefore insisted on Mr. Salter's obedience, as it was my duty to have done. The Major goes on to state that when we came to pass his flag, he exclaimed " the Adjutant to the Right, the Quarter Master to the Left," and that on my not making the corresponding move-

ment he directed the Adjutant to send me the Book. Now why does he represent me alone as not having moved to the left, any more than the Adjutant, for not having come to the right, for surely the disobedience was at least equally divided? The reason is self evident : but the plain truth was that I galloped off, as usual, after saluting, to the wheeling flag, and looked on the order as relating to the next, and not to the past, occasion of taking our positions ; and had Major Holbrow related the whole affair as it actually occurred, I think I may aver it had been differently decided. As it was, he received a reprimand for not having insisted on the immediate execution of his own injunction, and that very reprimand showed that I had been quite correct in compelling the obedience of my junior, the very instant that he disputed my order. His charges sent in against me for un-Officer and ungentleman like conduct, were returned to him from Head-Quarters ; and I was removed from my appointment for *insubordinate* conduct ; which, had all been known, might have been viewed more leniently.

I cannot conclude this explanation of that affair, without noticing one more instance of uncandid dealing on the part of the Judge Advocate. These are not points on which, with justice to myself, I can possibly be silent, for I ran too much risk of suffering by them greatly when they occurred. When I attempted to examine Captain MacKinlay as to how many paroles took place in April, the President said "what connexion has this matter with the charge?" and the Judge Advocate's reply was "I can not imagine, Sir ; it is quite irrelevant " ; and he then read out the crime

The question of the President was natural and just ; for in truth the Parades had no legal or original connexion with the Charge ; nor any but what the conduct of the Prosecutor forced them to obtain ; but the Judge Advocate knew that he *was fully* aware of the real drift of my examination, and also that it was grounded upon his own previous proceeding, and it was his bounden and solemn duty to have shielded from any ill effect of impatience on the part of the Court, by showing them the strict connexion that my question had, with matter that had been made the most of previously, to further my conviction. I pronounce in the face of the evidence, that I have not examined on any point, not previously dragged in on the part of the Prosecutor ; and I also maintain that *after* the privilege of so extended an enquiry had been accorded to the Prosecutor, I could not, with the slightest show of justice, have been hindered from following him ; for it would then have been too late for the Court to have rectified its error, as it could only have done so at the Prisoner's expense. It is perfectly unaccountable to me how the Judge Advocate could have made the answer he did to the question of the President, for I had repeatedly talked with him on the very point in dispute : he had written to the Regiment for a return of the Orders ; and he knew that Captain MacKinlay was summoned for the specific purpose of giving evidence respecting them, *in consequence* of the allusions which the Prosecutor had made. I grant that in his Opening Address, the latter informed you he did not think this occurrence was connected with the Charge, but, he nevertheless made mention of it in terms calculated to impress you with a belief that I was wholly culpable ; and Mr Goldney was subsequently allowed to advert to it in his evidence in Chief, and to include it among his imagined causes of my malice against him. How could

I expected to remain silent in such a case ; merely because, after making all possible use of the imputation, the Judge Advocate chose to say it was (like four fifths of what *he* brought forward) unnecessary and irrelevant to the elucidation of the matter at issue. In respect to the insult that was offered me on the ground, on the occasion of the meditated duel between Messrs. Goldney and Wilcox, I should say extremely little, leaving this Honorable Court to determine whether I merited it or not, but for the fact of so much stress having been laid upon it by the Prosecutor, to make it appear as a main cause of my asserted malice against Lt. Goldney. Even as it is I shall not detain you longer upon this subject than to ask you whether my conduct was that of a malicious, or of an indignant, and a much offended man. I demanded satisfaction, and threatened, if they refused me, to post the whole of them throughout the Army. Excepting I had sent in Charges against them, or horse-whipped them all round, what other course was there for me to have taken ; and the Court will remember that for having sent in a Charge at Loodianah, instead of a challenge, I was affected to be blamed by the very persons who now took umbrage at the more personal mode. But had it engendered any malice in my bosom, the feeling would have been directed rather against some of the malevolent and shameless instigators—against CAPTAIN *WILTON*, the senior of them, and an old and plotting enemy ; against LIEUT. and ADJUTANT *SAITER*, the chief inciter, who, I knew, detested me, and who had been the dishonest adviser of Major Holbrow, in all that was calculated to do me injury ; against LIEUT. *OLDFIELD*, another of them ; against LIEUTENANT *WILKIE*, who had violated his plighted word in having delivered Lieutenant Wilcox's note out of his own keeping ; against ENSIGN *BECHER*, the willing and malignant tool of the cabal, who was sent to inform me of their unjustifiable resolution.

On that particular occasion Mr. Goldney was, by the account which his instrument Ensign Becher was tutored to give of him at the moment, if any thing, the least to blame ; for it seems he rather resisted their advice, and felt disposed to meet me as the friend of Mr. Wilcox ; and though he required but little pressing to make him league with them at last, still if my animosity had been excited at all, it would naturally have risen against the leaders rather than the led ;---and fallen on the heads and hands that planned and wrought the mischief, rather than on the weak, or even the vicious, instrument with which they managed to consummate their purposes. But it is as ridiculous, and at the same time as inimical, as any of the various similar attempts made by my Prosecutor to fasten guilt on me, by an endeavour to connect past transactions with the occurrence laid in the Charge, to allege that I was in any degree prompted to murder Mr. Goldney on the 9th August, by this occurrence of the 19th of July ; for if I had been capable of having been so instigated, why should I have delayed the execution of the scheme for the space of three weeks, till my resentment had subsided ; when the means were as much at my command all the time, and the opportunity often a great deal better than the one which offered on the 9th of August?

It will hardly be argued that I delayed the execution till I should be out of arrest, because to one intending to murder, the mere breach of arrest would have been no consideration ; nor yet can it be said that I waited till the announcement

of my removal to another Corps, for no such event had been by me anticipated. It could not have been for the want of the degree of animal courage required in the perpetrator of a crime, for anger will be supposed to have given me the necessary desperation at the moment, rather than long afterwards, when reflection must have had time to have soothed my irritation. In a word the affair of the 19th of July can in no rational way be connected with that of the 9th of August, as long as I am supposed to have acted under an intent to murder; but let me once be supposed to have been influenced by a resolve to obtain a more worthy species of satisfaction, and the connexion between the two will be natural and consistent.

I shall, however, have to dwell longer upon the probability of motives, in the course of my summing up of the oral testimony at which I have now arrived; after having occupied very little of your time with the written evidence, compared to the ponderous mass of it there is, and the strenuous efforts used to make it bear against me. In fact I implicitly trust all that part of the case to your common sense, and unbiassed judgment, Mr. Pre-ident and Gentlemen, without the aid of any labored commentary; as I should do the entire of the matter, indeed, were it not that there was much of law, as well as of fact, to press on your consideration; and that if I were altogether silent, the only law you would have to guide you, in your verdict, would be such as the Prosecutor might think fit to give you; and where that should make against my part of the case, I have given you some grounds to doubt its strict impartiality, and shall give you yet more in the course of these remarks. As the only witnesses who can direct you in the least, in coming to a right decision on the matter of the indictment, are Lt. Goldney, the Bearer and the Khidmutgar, I shall trouble you very little with comments on the testimony of the rest; as I shall trust to an attentive perusal of it, on your parts for determining the weight it may be taken to deserve; totally irrelevant as the most part of it is, to the one transaction you have met here to scrutinize.

Lieutenant Goldney was first called in, and after having been examined as fully as the Prosecutor pleased, upon all the points that, with little good will to me, were jumbled together in the heterogeneous mixture of the Opening Address; he was brought at last to bear on the only matter regarding which he should, in strictness, have been questioned.

Up to that period his evidence, especially the portion of it that resulted from the cross examination, completely acquitted me, though evidently much against his wish, of every feeling and action hostile to himself, that could be supposed possible to incite even so naturally bad a man, as the Opening Address assures you I am, to the crime of murder; for he acknowledges that I came forward, voluntarily, with proposals for reconciliation; that even his cold and impertinent repulse did not hinder me from pressing an amicable adjustment; that we shook hands with a feeling, on my part, which he does not dare to pronounce, nor insinuate to be, deceitful, though he is compelled to confess that his own was insincere; that he used expressions of hatred against me; tried to turn me into ridicule and cover me with contempt; acted, in breach of his promise, upon an *ex parte* statement made by my enemies on his rejoining at Sultanpore; refused to visit me at that time, without giving me the slightest opportunity to rebut the calumnies he

had listened to behind my back ; owned, when pressed as to particulars, that although he had allowed those stories to make him violate his promise in respect to visiting me, he yet did not know enough of the disputes alluded to, to be able to swear, in cross-examination, whether I was not, at that time, on terms with six or seven of the Officers, though he boldly swore (when not looking forward to the test I put him to) that I was not on speaking terms with more than two, whom he particularly named ; confessed that he had joined with four more Officers to insult me grossly, by ripping open a quarrel on which he had shaken hands with me a considerable time before ; and that I did not, that he saw, display any of the "fury" he had previously stuck not at asserting had pervaded me. He, moreover, was compelled, though most reluctantly, to admit that notwithstanding he had for several nights thought fit to sleep with loaded fire-arms, in order to protect himself from my expected violence, yet his fears had evaporated (he had become ashamed of having acknowledged them, in fact) before the 9th of August, and that they had been originally grounded on reasons that were perfectly ridiculous ; and even worse than that, in a man who had taken pains to impress you, in several of his answers, with a very sublime conception of his spirit ;---a point, by the way, which men, conscious that they *do* possess true courage, are never the least anxious to throw into the foreground, because they no more imagine that any one could doubt it, than one who is really honest conceives that his fellows could take him to be a thief. Not one of those reasons ostensibly applied to Mr. Goldney himself ; for when called upon to disclose them to the Court he made it clearly appear that if they had been sufficient to have goaded me on to the murder of any one, it would have been Major Holbrow, or Lieutenant Salter, or any individual rather than Mr. Goldney ; nor could any thing have made the latter mention them, even to please the Prosecutor, and help him out in his opening narrative, as applicable to the 9th of August, unless it was a conscious feeling that he had been behind the scenes, and contrived much of the evil that had apparently issued from the first named officer. It was an inward feeling of guiltiness, in this respect, that compelled Mr. Goldney to fear that my anger might be poured upon him, even for sufferings in the infliction of which he had no apparent share ; though he imagined, as a conscious criminal is apt to imagine, that I saw into his secret machinations, and knew that Major Holbrow was in a great measure directed by the somewhat better, though mis-directed abilities of Mr. Salter and himself. Accordingly you will find that the reasons *he* gave for fearing me, more properly might have occasioned apprehension to those other individuals, and that nothing whatever but the workings of the silent monitor who makes cowards of us all, when we once become guilty, could have implanted fear of destruction in Lieutenant Goldney's breast, on account of events that he had (if he had) really no concern in. Now to mention the reasons, as delivered by himself. "On receipt," he says, "of Lieutenant Torckler's violent letter of the 19th of July" (which letter, you know, Gentlemen, demanded satisfaction, and so far from having threatened any meaner personal vengeance, distinctly informed them that to be posted and not murdered, was the next thing they would have to apprehend) "I considered his desperate situation, his public correspondence disapproved of at Head-Quarters and punished, one or more references then pending against him, and his general conduct as a matter of disgust to every

Officer present with the Regiment." Now none of these reasons applied at all to him, excepting in as much as his conscience informed him that his unwarlike practices made them apply; for the "violent letter" applied, as I have demonstrated, rather more to the other four Officers; the "desperate situation" had not, by his own account, been caused by *him*; the "references against me," were not from Mr. Goldney; and the "disgust" he specifies, I heard of for the first time, in evidence from himself. But he goes on to say that he considered the *hate* he had taken in the circumstances which called forth the violent letter, as another cause of fear, though the letter itself informed him clearly of the particular ulterior measure I intended to adopt; and he adds to the whole, the light in which I, *probably*, viewed him, as having superseded me in my late appointment,

This "probability" had no grounds but in his own imagination, as he cannot say that I ever expressed the least ill will, or did the least ill action towards him from the day that his name appeared in General Orders; and it was surely much more *probable* that I should feel resentment against the man whose misrepresentations had procured my removal, than against the individual who, without any despicable intrigues of his own (of which a clear breast would have told Mr. Goldney he had not been guilty) was, in the usual course of things, directed to assume the vacant situation.

These reasons, however, such as they were, induced the spirited Mr. Goldney--*not* to possess himself with fire arms, mark you, yet---that precaution required a still more tremendous cause of apprehension, but---to order his servants, as he swears it, though his own Bearer has denied the order, not to admit me into the premises.

However, he soon found it necessary to procure a pistol, to have it regularly loaded, and even freshly primed every twenty-four hours, and placed, under his nocturnal pillow; because what?—that I had made any forcible or stealthy attempt to enter his dwelling in the night time? or uttered any threat of awful vengeance against his devoted person? or had been seen prowling, within a mile of his Bungalow? or had been heard or known, to have been sharpening my sword, or putting flints into my pistols? Oh, dear no! a man of indomitable spirit, and strongly armed in honesty, would never have trembled for overt acts like these; but, Gentlemen, one of the Prosecutor's mountains was just then big in labor, and Mr. Goldney had "heard *some* vague report of my having *some* connexion with *some* fellows, in the neighbouring villages;" and those three *somes* made such a terrifying total, that he resolved on the "additional precaution" of sleeping with his anxious head over a loaded pistol; and the horror stricken Judge Advocate made as much of the sanguinary circumstance, as the shock which the first hint of it must have doubtless given him, rendered it possible for his mild, indulgent, and unbiassed pen to execute,

However, bad, and dreadful, as this *vague* report, and these "fellows," must have been, the accurate witness could by no means be induced to disclose where, or how, he had heard the rumour; and I urged it as much, as possible, in his cross-examination, in the hope of obtaining some clue to the mystery. But in vain did I investigate; for after all that had been done with it, after it had

been blasted forth as "infernal," by the trumpet of the Prosecutor ; and referred to with an evident mental shuddering by his staunchest and most obsequious supporter ; it appeared as impossible to be clutched as the air-formed dagger of Macbeth itself ; and, like that, was, I am led to believe, the mere conjuration of a very guilty conscience. But, Good God ! Gentlemen, is it not most cruel, and most gluttonously blood thirsty, in a man like Mr. Goldney, to come into a Court of honor and justice, and unscrupulously to labor in condemning another for a revolting intent ; when the best reasons he can give for having feared his victim, consist in what he chose to *imagine*, in the fulness of his own suspicious malignity, as having been the design of the person he accuses ? Is what he chose to think only probable, and to describe as arising from causes so little applicable to the alleged probability, to be thought of greater weight than the slightest piece of down, in establishing my guilt of the charge that is made against me ? Look at the whole of his miserable evidence. Compare his answers to the examination in chief, with those on the same points in his cross-examination ; and while you mark the contradictions in one place, and the qualifying in another ; the positive assertions *there*, and the descent to the "imaginings" and the "believe so's," and the "really cannot remember's," *here* ; the bold, unscrupulous swearing in the first, and the compelled confession of no very distant Atheism in the last ;---while you mark these points, bear likewise in recollection the anxious and tender solicitude of the Prosecutor ; the objections he ever made ; the helps he tried to afford him ; and the curious but solemn declaration that he firmly believed every word that had been, or might be, uttered by his darling and falling witness, in the matter now at issue ;---and were there nothing worse than that to be brought forward, I am confident that any reader of the testimony must pronounce it worthless.

But there is a great deal more than that, and it providentially tends in a direct manner, to render him incredible, and almost incompetent, in regard to all he alleges against me on the subject of accusation, as distinct from the extraneous heap of calumny that has been industriously raised around it.

Let us proceed to take him at the most material part of his various evidence, viz : his account of the transaction of the 9th of August, and we shall find that the only part of his relation which can legally or morally be believed, goes to the full length of exculpating me from the crime of an intent to murder him ;---so much so that I am persuaded there is no Judge on the Bench who would not have instantly directed the acquittal of a Prisoner ; nor any Jury who would not have as instantly attended to the direction ; upon beholding the failure of the Prosecution as thus exemplified. The only compensation which the Judge Advocate could have made me for his previous virulence, and the only atonement left him to make to truth and justice for his previous most enormous violation of both, as the Prosecutor on the Charge, would have been found in his at once dropping all farther endeavours to compass my destruction, as soon as he discovered that the testimony of his principal witness was totally insufficient for a legal conviction. I challenge him to send it forth, as a lawyer, to the world, that Mr. Goldney's evidence rendered me guilty of an intent to murder him ; for the man who could lay his hand upon his heart, and say that from his knowledge of the law it assuredly *did so*,---might be a sincere man perhaps, but the knowledge he relied upon would

be much too small to fit him for the situation of a Deputy Judge Advocate, on whose acquaintance with the law of his country, so much of life, and reputation, is at all times depending. Mr. Goldney acknowledges that on our meeting that morning I offered him no sort of violence whatever; that I did not speak to him threateningly, nor even rudely; that I submitted to be led by him out of the room; and to hear him insolently commanding me to quit his house directly. Gentlemen, is it in human reason to suppose that had I designed his murder I should have acted in that manner, even admitting that I should have proceeded, before that, in the way that I did? He came out of his room, by his own account, and by my admission, perfectly unarmed and abundantly exposed; and he stood utterly helpless within a yard of his armed and intending murderer, and yet he stood unthreatened and unscathed, while all the time he was treating me with contumely, laying his hands upon my person, and (as his Bearer informs you) commanding his servants to turn me out of the house.

Had my design been murder, Gentlemen, and to this design alone are you to look, what made his life worth half a minute's purchase;—what protected him from the fulness of my revenge? He would not, he confesses to you, so much as listen to my words, and he refused to read a paper which I offered for his acceptance. He did, in fact, all that was calculated to irritate even the patientest man, and then moved off in safety towards a private apartment!

Now, Gentlemen, I pray you attend to this critical moment. He was going away at the instant his contemptuousness had raised all my anger; I was losing the best of opportunities for inflicting the deadly blow; I had the instrument in my grasp, and my victim almost touching me; I beheld him going to a place of safety, whence I had no knowledge that he would return to where I was, or that, if he did, it would be equally at my mercy. I saw the object of my visit (let it have been murder, or explanation) going beyond my power of compassing, and that a few seconds more of time, a few paces more of motion, would place it beyond the reach of attainment. I saw and felt all this; the reflection may be supposed to have passed like lightning through a breast that was perturbed, that has been described as desperate, as containing a heart most utterly depraved, and that depravity indexed in a countenance, portrayed to you as wild, and phrenetick, and haggard; and what did I do, under this strong temptation? Did I do, or offer to do, the deed of the murderer you have been told I went to perpetrate? No; they who are most bent on my conviction, cannot, dare not, say I did *that*, or even attempt to do any thing that resembled it. I have been represented as having taken hold of the witness's arm; and he did his best, and swore his mightiest, to make me appear as having violently seized him; but in the succeeding breath he owns he had no difficulty in "shaking" or "jerk[ing]" him self loose, and yet, Gentlemen, your own eyes have beheld both our persons! Can you say otherwise, then, than that, supposing our health the same, our strength must be tolerably nearly equal; while from the witness's self-delineation, mine must have been on that morning a great deal superior to his: for he said he was extremely unwell, under the influence of medicine, and weak and irritated from those concurrent causes. Will it, therefore, be for a moment, credited

that had my wish been to have forcibly detained him in order to have glatted my appetite for revenge, I could not, and should not, have rendered his escape a labor of infinitely greater difficulty than what can be denoted by the assertion that a single shake, or jerk, accomplished it? Undoubtedly it will not; and where, then, up to the instant of his having re-entered his bed room, is the intent on my part to murder him to be discovered in any of my actions, or darkly shadowed forth in the expressions which I used? I pray of you, Gentlemen, to keep to this intent; for it, and no other, is averred in the indictment, and to it, and no other, must your verdict apply. Suppose any other probable, or possible, intent, and my conduct will be consistent enough. Suppose a wish on my part that he should sign a paper, not improperly worded, that should save my character from future imputation; suppose that, having attained that reasonable end, I meant to have gone round, with a similar view to the others who had assailed me; suppose a duel to have been my ultimate intention, when fair means of persuasion had entirely failed; suppose any one of these determinations to have influenced my mind, and the rest of my behaviour will be sufficiently accountable.

But not one of these, Gentlemen, are you at liberty to suppose. An intent to *murder* is that alone which you have to reconcile with all that was done in pursuance of that intent; and as the comparison strikes you, so will be your verdict.

To return to the detail of Lieutenant Goldney. It informs you that he succeeded, without any thing that he even pretends to denominate a difficulty, in returning to his bed room; where, *as he declares*, I was about to follow him, and and on *that* account, he drew forth a loaded pistol from beneath his pillow. He distinctly says that he did this, after having forborne as long as a man of spirit could (that forbearance has been abundantly exemplified!) for the purpose—*not* of protecting his life, which had not been put in peril, but for guarding his private apartments from the intrusion of a stranger. Gentlemen, even if the fact on which that reason was founded, had been corroborated by other eye-witnesses, or simply left uncontradicted by them all, I shall presently convince you that no law which governs us could have authorized the use that was made of that pistol; but it has clearly been proved, by better evidence than that of Mr. Goldney, that, so far from having opened, and partly entered, I did not so much as go *near* his bed room; and he must therefore be taken to have given a false reason for an unlawful act. However if I did enter his bed room, I entered it, to the best of his knowledge, *unarmed*; notwithstanding which he drew forth the pistol, and, advancing towards me with it loaded in his hand, he used the following expressions of undoubted menace;—"very well, Sir, if you will *not* leave my house"—and there he stopped, because for a man so armed there was no occasion to complete a sentence which the action of the pistol comprehensibly filled up.

Still I offered him no equal resistance; I produced no weapon to defend myself from him; but I retreated, by his own account, to the opposite corner of the verandah room—he following me with that pistol, and those menacing expressions, to several feet beyond his bed room door; and it was not till I had arrived close to the opposite wall, and till I could not with safety, have attempted to shield myself

any longer by retrograding, that he first perceived, I was provided, like himself, with an efficacious weapon to use in my defence. So far, Gentlemen, my hostile actions were all consequent upon his, and therefore not the actions of one who meditated a murder; and as the Judge Advocate told you, in his Opening Address, that my having followed Mr. Goldney into his bed-room was a fact (as he chose to call it) on which your Verdict would principally turn, meaning all the time a verdict of guilty, I ask you to say if I am now to be condemned on it, since the very reverse of the "*fact*" has been proved in evidence. I had never offered Lieutenant Goldney any manual violence.---If I took hold of his arm, he first took hold of mine; and I did not in any way retaliate the contumely of his language. If I drew forth a pistol, it was not till he had first exhibited his own, and threatened and followed me with it, like one bent on its hazardous employment; and lastly he admits, in the fullest and clearest manner that is possible, his having cocked, and presented his at me, *before* he can say that I discharged mine at him. This is of vital importance, Mr. President and Gentlemen: The whole case turns upon it, and it is from Mr. Goldney's own unforced, though I believe unadvised confession, that I strengthen my pleading by the term *before*. His own words are as follow, after he had told you I had cocked, presented, and fired my pistol: "Upon seeing him cock his pistol, I drew back the stopper and cocked mine, and snapped it at him." From this it had been evident that he pulled his trigger the first; but he recollected that that was admitting too much in my favour, and he so far qualified it as to say that mine had gone off *by the time* his was cocked. The utmost he can do, therefore, is to modify his evidence down to a simultaneous firing: so that while the drawing of the triggers was thus coincident, the preceding actions had been *led* by him, and mine were only consequent upon his own. He drew forth his pistol first, and threatened he would use it, if I did not leave his house. I retreated from him, and on his following me, I exhibited my own. This the law fully warranted my doing. Very well, he drew back his stop and cocked. Of course there was not a second's interval between these actions. I cocked too, and we fired, it would appear, as nearly together as it was possible for us to do. In the whole of this proceeding I had the law along with me; for when a man draws a dangerous weapon against you, and you have retreated as far as you prudently, or conveniently can, (as I certainly did, though the imminence of the danger prevented its being incumbent on me to have retreated a yard; and if I did not make for the only door of exit, you will remember that his own servants were there, ready, as I could not but conclude, to have assisted him, and that it was therefore prudent for me to avoid them as well as their master) you are not commanded to wait till he has made his attempt upon your person, but you are authorized to *prevent* his doing so, the moment his design becomes fairly manifest, by such an effort as you are enabled to make---no matter whether or not his life becomes thereby endangered. Very good:--on my first shot having missed him, he says he threw away his pistol, and screened himself behind the right hand leaf of his Zouanah door. He was positive as to its having been the *right* hand leaf, for he described it at one of the doors of this room, and therefore on that point there

can be no misconception ; though I shall amply prove to you that he swore most falsely. But first let us admit his entire truth, till we enquire what I then did, that was compatible with a design to *murder* my adversary. On seeing him unarmed, and endeavouring to hide himself, did I take any measures to make sure of my object at the second fire, by advancing closer to him, or forcing open the door that screened him, or dragging him from behind it, as he crouched in apprehension, and immolating him upon the threshold of his door ?

Had I been a murderer, all this I should unquestionably have done ; but what *was* my conduct, agreeably to his description ? Why, I fired at him again, without advancing nearer, and while he was so much concealed that to *kill* him was impossible ; and then allowed him, weak and agitated as he was, to throw, and hold, me down upon a couch, without even attempting to knock him down with the butt end of the Pistol so ridiculously discharged ! Gentlemen, assuming the intent which the charge has laid against me, this sudden quiescence, after such great mismanagement, is not to be attributed to absence of mind, or to the workings of remorse, for if that intent had been veraciously averred, I must have gone to the issue, with a formed and digested plan of operations, the failure of which might have rendered me more *desperate*, but would scarcely have made me *passive*, in the hands of my opponent. Besides, I am represented by the Judge Advocate as a hardened and malicious wretch ;---a long designing and implacable monster ;---capable of being actuated by resentment of nearly two years' standing ;---and, in one word, as accomplished an assassin as *theory* alone was capable of rendering me ; so that it cannot be supposed that my first attempt at the *practice* of the art, dictated, as they declare it was, by the deadliest revenge, and reckless as desperation must have made me of the consequences, should have been so miserably mis-conducted as Mr. Goldney's own evidence demonstrates to have been the case.

When I come to state the law to you, Gentlemen, which applies to the matter that the information lays (and I shall take care so to state it as to challenge contradiction) you will be entirely convinced that all the danger which Mr. Goldney ran, was incurred by what is denominated *son assault d'emesne*,--that is to say, by his own original attack upon me---and that if homicide had occurred from the firing of my pistols, it would have been the justifiable, or at least excusable, species committed *se defendendo*, of which every person has a right to avail himself, for his preservation in the hour of imminent peril. In hereafter deliberating on Mr. Goldney's testimony, there is one circumstance, which, if I left it unexplained, might render you doubtful about acquitting me, though you would have no legal right to consider it at all. I mean your knowledge that I went to his house with pistols about my person, and the consequent *supposition* (for it can be nothing more) that my intent in so doing must of necessity have been mischievous. Without stopping to insist that, against positive facts, and overt acts evincing a contrary design, no supposition of your own should be at all allowed to weigh as a feather in the balance : I shall let you see, by a plain statement of the truth, that I had a design in arming myself totally at variance with the base and monstrous imputation that is now before you.

On having been ordered to join and do duty with another Corps, it must naturally have occurred to me, that as the insult so wantonly offered to me, when

the second of Lieutenant Wilcox, by the five Officers whose names have been recorded, could not have been kept private, I was liable to be rejected from the new society I was directed to enter, unless I procured the stigma to be totally wiped away. I accordingly adopted a plan of getting redress, which I hoped would have succeeded to my own satisfaction; and which I think I may say would have succeeded had the event been in the hands of any other Commanding Officer than Major Holbrow. I wrote to him publicly, as soon as I was apprized of my transfer elsewhere, and requested him to take such measures as he deemed

sion that a combination

dated the *8th of

guage you can each form a judgment. As the only reason assigned by the combined insulters for their conduct, was the circumstance of an old dispute, which Major Holbrow himself was aware had been decided by competent authority; it was surely not too much in me to expect that he would have strongly reprobated the attempt recently made to bring it forward again upon a private occasion, and I accordingly relied upon his prompt interference. I was, however, most grievously disappointed; and by others it must be pronounced whether he did his duty or not, when he returned my letter, with a few lines in a contemptuous and irritating tone, and declined to take any farther notice of the complaint.

Gentlemen, I wish not to infringe any military rule of discipline, by commenting on the acts of my late Commanding Officer, more than I am justified in doing in order to make my story clear, in a case where my life depends on an ample vindication of doubted conduct; and therefore I shall only say that I felt a perfect conviction, founded on various occurrences that had before transpired, that Major Holbrow was, almost entirely, under the mental guidance of his Adjutant and Quarter Master (Messrs. Salter and Goldney) who would both have had to answer for their conduct, in the event of a public investigation; and that they, or one of them, had prevailed upon him to reject my reference in the manner which he did. At all events, that reference *was* decidedly rejected, and I then felt that I must either leave the Regiment under a degrading insult, or seek a personal reparation from the individual who had caused it, or rather on whose account the insult had been offered to me. And I may farther, in this place, relevantly remark on the perjurious inconsistency of Lieutenant Goldney, when explaining his own part of that day's proceeding, as exemplified by the variety of unconnected reasons which he tells you swayed him. The first was because he and I were not on speaking terms;—that was his own. The second (that of the association) because I had formerly made a public reference, instead of a private quarrel. The third, because Ensign Becher had told Lieutenant Goldney, that I had objected to Mr. Wilkie's being the latter's second, as he (Wilkie) and I were not on speaking terms. Mr. Becher being a mere boy, and not a very wise one, and having been moreover the cat's paw of his five seniors in the matter, might, for aught I know, have really told them that, or any other false or foolish thing. But I cannot be answerable for all that the young man was drawn in, or chose voluntarily, to assert; and it must therefore suffice for me to say that I never made any such objection; though I did say, on hearing Mr. Goldney's first one, that I *might as well* object,

on similar grounds, to Lieutenant Wilkie, with whom I was not on terms;—an illustrative remark very different from an exception. The fourth reason given was because I had behaved in an alleged improper manner, in complaints I had sent in, of a "raking up" nature, against Major Holbrow. The fifth, because Mr. Goldney did not like to become implicated with one who might, at a future period, induce the fighting of a duel, as he was pleased to fear, as an offence to have him punished for. The sixth, that none of these reasons could, after all, have influenced him personally, but that he felt himself bound to attend to the unanimous opinion of the four colleagues; and the seventh was that Ensign Becher (iterum Crispinus!) was as fit a second for Mr. Wilcox as I was, and had been directed to offer himself as my substitute accordingly. To such a degree as this have they been forced to labour to give you, Gentlemen, some stronger reason for their conduct, than they chose to give me; and to such a degree have they failed in, after all, making out a justification! The only excuse Major Holbrow condescended to give me for his non-interference in getting me redress, was in itself a very weak one; for it was based on the fact of my no longer being a member of the Corps. He forgot, or chose to over-look, that I still belonged to the Station, which also, he commanded; and that, at any rate, it is the business of one who commands a Regiment to take cognizance of every complaint that is made against the conduct of his Officers, whether the complainant be attached to it, or otherwise.

Be that as it may, however, on receiving the reply which returned my application, I perceived what that reply made my only alternative; and I accordingly resolved upon seeing Mr. Goldney. Now, Gentlemen, if you will mark my conduct from that very moment, and compare it with the charged *intent to murder*, you will have more and more reason to acquit me of that intent, by being supplied at every step with new presumptive proof that it was next to an impossibility (allowing me the power of ordinary calculation) that I should have entertained it. It is in evidence before you that I had laid my dawn, on the 8th of August, that I might start for Allahabad, on the 12th ensuing; but if I had contemplated the act of murder when I wrote the letter,* should I not have made the time of executing it in something like unison with that of my departure, so that some chance of escape, however slight, might have thus been yielded me? Every murderer looks to the chance of impunity, though he may work himself up to a disregard of its certainty; but I arranged my departure for the 12th of the month, a few hours before I executed an alleged attempt to murder on the morning of the 9th, which the Prosecutor's whole statement goes to insinuate was not a *sudden* resolve, but one at least partially contemplated in the practising with pistols several months before; and in the brooding over injuries old enough to be forgotten by a less vengeful rememberer. Up to the post hour, then, on the eighth of August, there is an irresistible presumption that I had not planned the murder of Mr. Goldney; and I shall now account to you for having gone with fire arms to his Bungalow on the morning of the ninth.

* To the Deputy Post Master at Allahabad; a statement the Deputy Judge Advocate General's admission in Evidence for Defence, Page 111.

As I knew I was going for the clearance of my character, I do not hesitate to say (though I am aware the strictness of the laws will reprobate the idea) that I perceived the possibility of a duel, in the event of the total failure of my persuasive efforts; but any thing more blameable than a fair and determined duel, I take the God, to whose presence your decision may be the means of hurrying me, to witness, I never in the most distant or ephemeral degree contemplated. I therefore put my pistols into the pockets of my trowsers; and to this fact referred the question put to my servant, regarding the holes in the bottom of those pocket; which was one of the questions the Judge Advocate thought it witty to usher to your notice by a burst of laughter. I felt the importance of the question, and I therefore consented to undergo the tribulation of the ridicule, for the benefit that I looked for in the answer of the witness; and that answer accordingly made it appear (perhaps I should say the several answers of both my servants made it evident) that the holes had been cut that morning, for the purpose, as I assure you, of allowing the Pistols to go into the pockets, and to descend as far as the lock of each of them. This would not have been the way a designing murderer would have carried his Pistols, instead of holding one, at least, of them ready in the hand which he had a cloak to conceal; because the chance was obvious that the lock might entangle in the sides of the aperture, and prevent the very speedy extraction of the weapon at the moment it was required. Having done that, I wrapt my cloak around my person (not for that sole and particular occasion, for you have it in sufficient evidence that it was not an unusual thing for me to go out in my cloak, during the wet season, whether it was raining at the moment or not) and proceeded without any disguise to the house of Mr. Goldney. I did not even wear the native dress, that I was, in such terrific words, described as being clothed in on several former occasions, nor yet did I plant any of my banditti in ambush; but I went, straightway and openly, in broad day light, to the house, and having entered in the usual way that a visitor does, I waited till the servant had informed his master of the circumstance. On the latter's coming out, in a great degree unclothed, and totally undefended, I endeavoured in despite of his violence and his rudeness, to speak to him with fairness (instead of to shoot him through the head, as I ought to have done for the satisfaction of the Prosecutor) and at last offered him a paper, which I hoped he would peruse, though he refused to listen; and as that paper forms part of your Proceedings, you can judge whether it demands a concession (after all that I had suffered) of a nature that would have degraded any Officer to have made; or whether it bears the character of a paper so severely drawn up as to insure the refusal of a man of honor to sign it, and thus give me even that wretched excuse for immediately destroying him. And now, Gentlemen, comes the plain and unforced reason for the concealment of my Pistols. As I only looked upon a duel as a *dernier resort*, and would have preferred a more amicable adjustment of the claim I went to make, I should not have been acting in a manner that conformed with that desire, had I gone to Mr. Goldney with the pistols in my hand, and said, "Sir, you must either sign this paper with your name, or take your choice of these two pistols and give me instant satisfaction."

That would have been closing the door (as all his behaviour did), to the chance of explanation ; for no man of even half the spirit that Mr. Goldney says he has, could have possibly signed a paper on that sort of compulsion. The concealment of the pistols, up to the moment of all milder efforts failing, was therefore demonstrably of a peaceable, not a murderous, intent ; for had it been the latter, I should not (as you have already seen) have permitted him to have escaped from me, after his final and rough denial of any reparation, and sheltered himself in his privatest apartment ; instead of perseveringly keeping my arms undrawn, till he had actually produced his own, and prepared to discharge them.

So completely does Mr. Goldney's own evidence exonerate me from all that the law requires to establish this felony, that had I even been guilty of it, and he, either through his silliness, or his humanity, had persevered in giving that account, no Jury that ever were collected in an English Court of Justice could have brought in a verdict of condemnation against me ; for it is not evidence that can produce conviction. And I shall put this matter in a yet stronger light to you. I shall suppose it true that I went to the house with the intent imputed to me ; and I can still maintain that so long as that intent was in no way manifested, beyond what the principal witness declares, Mr. Goldney was not entitled to have acted as he did, even on a bare suspicion, which he cannot say he had, that I meant to murder him. A man having all the appearance of a Gentleman, or of a respectable tradesman, or farmer, might come up with me on the highway ; and that man might be a highwayman, and have a design to rob, and perhaps murder me, and I might even see part of a pistol sticking out of his pocket :---but as long as that individual rode peaceably along, either behind me, or before me, or on one side of the way, and evinced no disposition to molest me ; or if he even tried to pick a quarrel by using some annoying words ; I should have no more right to pull out a pistol, and say " Sir, if you do not go to a greater distance from me"---and leave the display of the weapon to finish the threat ; and then, on his drawing and cocking a similar weapon in consequence of that threat, to pull the trigger of mine with intent to discharge it at him ;---no more right, I say, to threaten, and do, all this, than he would have to demand my purse, or take my life if I refused it.

Yet this is precisely the case before you ; excepting that the *venue* was the complainant's house, and not the King's highway ; wherefore I shall show you, Gentlemen, that the latter circumstance did not give Mr. Goldney one iota more right to menace me, as he did, than what, by the hypothesis, I should have had to have aggressed the highwayman.

I did not force my way into his house, nor is it pretended that I went there with an intent to steal, which last intent would alone have authorized a dangerous method of ejecting me by force in the day time. I did not enter as a burglar, for I may leave the Judge Advocate to inform you, that the hour of my entrance made that offence impossible ; and although it is proved that I did not force, nor endeavour to force, the bed-room ; yet even if I had, the law would not

have held that as a justification for killing me (*ergo*, not for an attempt to do so) unless I had followed it up with such a degree of outrage as left no alternative to the owner, but to kill me, or to be killed or grievously maltreated, himself. It is laid down in every book of authority, that no affront, by words or gestures only, is a sufficient provocation, so as to excuse or extenuate such acts of violence as manifestly endanger the life of another ; so that if all were true that Mr. Goldney has stated about my having motioned as if I were going into his room, it would not have justified him in assailing me with a murderous weapon. Even all his provoking words and gestures to me, the Court have been made aware did not instigate or incite me to draw my pistol upon him ; nor did I do so till I had retreated near to the opposite wall, in consequence of seeing how he had armed himself. At the very utmost, my having staid in his house after he told me to quit it, was a simple trespass, for I did not use any violence to maintain my ground ; and no trespass, it is agreed, either to land or goods ; no words of reproach, or provoking or insulting actions or gestures, short of an assault, are sufficient to free a homicide from the guilt of murder ; and as Mr. Goldney admits having first assaulted me, it follows that if I should not have been justified in putting his life in danger, as long as he abstained from making use of his fire arms ; he could have had no lawful cause whatever for jeopardizing mine, when I did not use towards him either insulting language, or intimidating gesture. The Judge Advocate, or the Prosecutor (for I know not which, they became so intimately blended) brought forward a case wherewith to overwhelm me, that was as little applicable to the case in point (he is remarkably infelicitous, however, in his production of cases) as though it had been an old suit in chancery ; for he instanced that of Hatfield who fired a pistol at his late Majesty ; and subsequently the speech of Counsel, who asks the Jury what they would think of *his* discharging a pistol at one of themselves. Gentlemen, had the King been cocking and snapping a pistol at Hatfield, and the latter had, in consequence thereof, discharged one at the Sovereign, the case would then have been in point to the present ; and though Hatfield *might* have been convicted of treason, no Judge on the Bench would have deemed him guilty of murder. So, if the Jury-man referred to, had (from anger at the Counsel, we'll say, for pleading against the Juror's opinion of the matter) taken out a pistol, and aimed it deliberately at the Counsel's head ; and the latter had *then* drawn forth his weapon, and fired it at the Jury-man, after having retreated as far as he well could upon the sudden, the case might have been quoted with relevancy by *me* ; but, as it was really supposed by the Barrister in question, it was of no more use to the Judge Advocate than what about nine tenth's of his Opening Address has by this time proved to be. If any part of what occurred on the 9th of August is at all referable to antecedent malice, on whose side does the malice appear to have remained ? On mine, who more than once endeavoured to be reconciled, and who was never heard to threaten Mr. Goldney ; or, on his, who always repulsed my endeavours, who was forced to own to a counterfeit making up, who acknowledged having expressed a hatred for me in language proverbially strong, and who could not lay before you one act of mine that had a tendency to injure or to irritate himself ? If malice is to be presumed from antecedent conduct, I refer you to the oldest period of our intercourse which is before you, for proof that it was more evident on his

side than on mine ; and I do not in the least fear to accept the definitions of murder, and the indications from which the law construes the existence of hatred and revenge, which the Judge Advocate himself has read to you from his books ; and which it would therefore be superfluous for me to read again. To be sure, he kindly intended them to make wholly against me ; but I feel too much confidence in your good sense, and natural discrimination, to have the least fear, that you will allow yourselves to be led against your better judgments by the strained constructions of my very eager prosecutor.

But a few words tending to show how very much his introduction of those authoritative definitions tends to throw the burden of guilt on Mr. Goldney, instead of upon me, are too requisite for my case to be considered superabundant.

He gives an illustration of express malice by saying ; " if one execute his revenge upon a sudden provocation, in such a cruel manner, with a dangerous weapon as shows a malicious and deliberate intent to do mischief, and death ensues, it is express malice, from the nature of the fact, and murder." Now, did, or did not, Mr. Goldney precisely thus endeavour to " execute his revenge" with a " dangerous weapon" and in a manner that showed his " intent to do me mischief." on what he described the " sudden provocation" of my entering his Zenanah ; and did I attempt a similar revenge for all the provocation I had previously received from him ? Again, says the Prosecutor, alluding to conduct of mine that he invented, and therefore could not prove, " if a man kills another without any or without a considerable provocation, the law implies malice ; for no man (and he put, for his witness, a fatal emphasis on these words, in the hope that they would stick exclusively to me) " for no man unless of an abandoned heart, would be guilty of such an act upon a slight, or no apparent cause ; for no affront by words or gestures only, is a sufficient provocation, so as to excuse, or extenuate, such acts of violence as manifestly endanger the life of another." Gentlemen, if Mr. Goldney had killed, when he attempted to kill me, conformably to his own description in evidence, when I certainly had given him no adequate provocation (for my alleged entry of the bed room is disproved) can it be an instant doubted, from the foregoing doctrine, that the malice would have been implied which would have constituted it murder ; especially when his antecedent acts and expressions of ill will to me had been proved, as in this case they have been ; and if *no* affront, by words or gesture *only*, could have extenuated his violence, what could he have urged---or what *has* he urged---on my part to have excused him ? " It does not," says the Judge Advocate, " appear to me that the act of the Prisoner, can, by any possibility, be brought under any other head than wilful, deliberate, and malicious, murder ;" but it is sufficient for me to say that any unlawful act, deliberately committed, with an ill intent, tending to the personal hurt of any one, immediately, or by way of necessary consequence, in which death ensues, is murder.

As the former part of this sentence was uttered *before* the investigation of the case, I hope, (and rather for his own sake, than mine) that he will not persist in declaring his conscientious belief that under no lighter head can my actual conduct be brought, now that he has seen how far short of what he imputed to me, the evidence of his principal witnesses has proved ; and as to the latter part of the sentence, which is taken from the books, I need only remark, that, as no death en-

sued, the doctrine is inapplicable; and that, at any rate, all the "unlawfulness" of that morning's transaction, was commenced, and led on, by Mr. Goldney, I originally entered his house in a manner lawful enough; and I had not, by his own account, refused to quit it before he assaulted me. His statement is that he laid hold of, and conducted me, (unresistingly) to the verandah, the instant he had declared he could have nothing to say to me, and desired me to depart; so that I had not, at that period, done any, thing unlawful; nor did the true design of my visit tend to the personal hurt of any one, either immediately, or by way of necessary consequence, nor in any, save by the chance, and not necessary, way of duel (which nothing but his refusal of any milder satisfaction would have been likely to have brought about) and I am sure this was not the way you considered the Judge Advocate to mean, when he quoted the above piece of law in his opening statement. At any rate, you must never forget that, let my design have been whatever it might---to bully and murder, as the Prosecutor asserts, or something more creditable and pardonable as I have declared it---it had not been *manifested* as mischievous, when Mr. Goldney attacked me with his loaded pistol; and that fact is enough to turn aside from my part of the transaction the criminating application of the undistorted law. Lastly, he asks (on the strength of the previous account, I suppose, that Mr. Goldney had given him, and which he fondly hoped would have remained unshaken) whether my following Mr. Goldney, as the latter retreated, does not prove an intent to injure him grievously? First of all, I answer *No*, unless I followed him with threats of violence, or corresponding gestures, which he cannot say I did; and secondly, I answer, that the question is now inapplicable, excepting as it alludes to the reversed case, as established by the evidence. I therefore ask, now that it is my turn, and on surer grounds, to do so, whether Mr. Goldney's having followed *me*, with a pistol in his hand, and a menace calculated to terrify me, on his tongue, as *I retreated from him*, on seeing that pistol, and hearing that menace, does not prove that *he* had an intent to injure *me* grievously, and that I, and not he, was acting on the defensive?

Having thus made as many comments, as I think in any way necessary, upon the essential parts of Mr. Goldney's evidence; I have still to show you how it ought not to be overbalanced by that part of his servants' which, with obvious falseness, states me to have fired not only first, but before even their Master had armed himself at all. I cannot but look upon his own admission, as relating to this most material point, as truly providential; and while it shows you, Gentlemen, how easily an innocent man may be condemned, it will make you proportionably cautious in accepting such testimony from the same source, as may tend to make against him. From my knowledge of Mr. Goldney's long standing animosity, and the certainty I feel that he was anxious to convict me; as well as from my observation of all the Prosecutor's feelings, as marked and signified by his acts and his expressions (some of each being recorded) I am fully persuaded that nothing but the shortsightedness which is often found as the concomitant of malice, caused the former to confess having first assailed, and simultaneously fired at me; and but for that confession, I tremble, more for my good name than for my life, to think how impossible I should have found it to have combated the evidence of his

servants, however desperately false I knew, in my own mind, that evidence to have been. But, may God be praised, the zeal of my adversaries outran their worldly wisdom; and against that which must otherwise have forfeited my life, and destroyed my reputation, they have themselves supplied me with an adequate defence! You are doubtless aware, Mr President and Gentlemen, that the causes which render a witness incredible against me, are the very ones which serve to strengthen whatever he may happen to mention in my favor; and that the admission of Mr. Goldney, of his having been the first to speak insultingly, and act menacingly, on the 9th of August, is immeasurably more conclusive than the similar depositions of witnesses called by myself for the purpose of my acquittal. The testimony of his own two servants, even if it stood more unimpeached than, in due time, I shall demonstrate that it does, could not be taken to outweigh that of their Master in my favor (to say nothing of the rule of law which prohibits a party from discrediting his own witness) considering the bias that he obviously had against me, and the equally natural bias on their parts to vindicate him at the expense of me, who, they knew, was opposed to him. One of his last answers to my cross-examination, was of itself almost enough to render him incompetent, excepting for the Defence; for he acknowledged that he expected my condemnation would be the means of saving him from being indicted for, *mutatis mutandis*, the very same offence; and therefore the vital interest which that acknowledgment evinced him to have had, in compassing my conviction, was at least the next thing to his total disqualification as a Prosecutor's witness.

This is a stronger cause for incompetency than that of Mrs. Rudd, which was mentioned, *obiter*, by the Judge Advocate; for she was only thought competent (her credibility being left to the Jury) as a witness against a man, whose conviction she said she hoped might lead to her husband's receiving a pardon—he having been *already convicted*; so that not the law, but only the King's clemency, could have been affected by the circumstances resulting from that trial; unless, indeed, it can be supposed that she could have prevaricated with fatal impunity in presence of acute examiners, and with ninety nine chances to one against her baffling their scrutiny. In fact there is now scarcely such a thing in criminal law as positive incompetency; but the obvious bias and interest of a witness are always considered as neutralizing his testimony, in proportion to their apparentness in the opinion of the Jury; and that apparentness, in the case of Mr. Goldney, I leave to be judged of by the members of this Court. On this point I deemed it advisable to strengthen my own opinions, by those of others better qualified to judge; and I therefore obtained the following from Messrs. Clarke, Cleland, and Dickens, who are distinguished Barristers of the Supreme Court of Calcutta; and for whose extreme and ready liberality, in giving me, unrecompensed, their most valuable advice, I never can feel myself sufficiently grateful. Their opinions shew how little credit is due to a witness who, like Lt. Goldney, stands in the light of an informing accomplice.

Question. Is a man charged upon oath with the commission of a Felony, a competent witness against another for the same Felony (that is A. charged with shooting at B. a good witness against B. on his trial for firing at A.) in whose conviction the witness must have so deep an interest, as the preservation of himself from eventual condemnation?

Answer by Mr. Longueville Clarke. "A. would be a competent witness on the principle that an accomplice may be admitted to King's evidence, but it is for the Jury to weigh carefully how far the circumstances shake his credit---there are not instances for many years of convictions having been obtained on the *unsuspected* evidence of an accomplice."

Answer by Mr. W. L. Cleland. "He is a competent witness---the objection is one to credibility and not competency---there is now hardly any case in which a person is on account of interest, incompetent to give evidence on a criminal Trial."

Answer by Mr. Theodore Dickens. "A man charged on oath with a felony, be it the same that he B. comes to prove he has not committed and that A. has, is a *competent* witness though an interested one.--It is not that sort of interest which by law disqualifies.--The position in which he stands might affect his credit, not his competency."

I shall now make manifest, as I promised to do, some points of great consequence in which Mr Goldney must have perjured himself completely, for his variation from the truth can never be justified by the plea of an imperfect memory, on the part of one whose memory was extremely tenacious of all that served his purpose. He positively affirmed that he sheltered himself from my second fire behind the right hand leaf of his bed room door; that my ball, or what he conceived to have been it, passed the edge of that leaf at about a foot, or half a foot to the left of it and entered the *right* half of a venetian'd door directly behind the one which he had closed. He had previously described me as having retreated to within a pace, more or less, of the opposite corner, (B, in the annexed plan⁴)

Now, Gentlemen, be so kind as to inspect as I go on, this accurate plan of the locality, as taken from his evidence; with the trifling, and quite immaterial, difference of the outer verandah being more curvilinear than what his rougher sketch designs it.

It is drawn, you will observe, from a scale of feet; and the sizes of the rooms and positions of the doors, are the same as in the rougher plan which has been all along before you,---done and signed by Mr. Goldney himself, and admitted by him to be sufficiently correct. A represents where he must have stood behind the half closed door; B. is my position, distant one pace from the opposite wall, and c c c the line of fire passing even more closely than he asserted to the edge of his panel; while E. is where the bullet must, by his own, and other evidence have penetrated the venetian. You see, then, Gentlemen, it is utterly, and mathematically impossible for that ball to have struck that venetian, and at the same time have passed to the left of the half closed door-leaf at A. But if it should be thought that by placing me a pace, or thereabouts, from the opposite wall he also meant to place me equidistant from the side wall, I should then have stood at F. and then the line of fire s. s. s. as satisfactorily shows the entire impossibility of Mr. Goldney having spoken the truth in that particular instance; and

unless, indeed, I had fixed myself at least as much farther to the right as H. which is contrary to *all* the evidence, the ball could never have attained the asserted mark at E. agreeably to Mr. Goldney's own description of his personal locality. He is flatly contradicted by his own Khidmutgar, who declares that he closed the other leaf of the door, and his testimony is, so far, manifestly accurate ; while Mr. Goldney's object in the mis-statement, having been to show that he closed the part of the door best calculated to shield him from my ball, with reference to where he had chosen to place me, is put beyond the excuse of momentary inadvertence, and brought within the criminal pale of ultroneous perjury.

In like manner, he most obstinately swore that I forced open his Zenanah door, and actually entered the precincts of the apartment. He urged this, insufficient as the law would allow it to be, as his great excuse for having resorted to his pistol ; and as it denoted a certain degree of spirit to be ready to protect by the most strenuous exertions, the privacy of his harem, I did not fail to observe the extenuating effect which that circumstance seemed to have (not unnaturally either) on several of your minds ;---and I do not deny that an honorable and bold hearted soldier, would, *prima facie*, be disposed to applaud, rather than to condemn, the utmost efforts of a man to guard from shameful intrusion the female he protected.

It was a well got up story, and had its temporary effect, even beyond this Court ; but his own servants demolished it utterly and irremediably ; and as all their bias tended towards their Master ; and as the Moosoolman, in particular, would have felt indignant if I had violated what to him was the sanctity of the private apartment, and gladly have sworn me to a death of ignominy for that offence alone, you have no room whatever to doubt that Mr. Goldney was in that instance again most wilfully, and maliciously, and even murderously perjured.

The reason why the servants are better evidence than the Master, you may see in Phillipp's law of evidence (and indeed all others) *passim* ; and it is owing to their testimony being favorable to me, while it is, at the same time, directly against the cause in which they must have naturally conceived themselves to have been virtually enlisted ; and as they are to be believed, on that account, in preference to him ; so is he, *a fortiori*, to be credited in preference to them, when he declares I did not fire at him, as they say I did, and when he makes himself to have been most conspicuously the assailant. Gentlemen, in weighing that evidence in the scales of discerning justice, I hesitate not to say (well knowing under what scrutinizing eyes the assertion yet will come) that no British Judge would scruple to declare that the one side out-weighed the other ; and again that the evenly balanced scales were turned, exactly as I have here pronounced them, in the respective cases of the Master and the men, and the servants *versus* the Master. I have already said, and I again declare, that even a guilty man could not be legally convicted, but just the reverse, on the strength of the worst that has been proved against me ; but as the case really happens to stand, the person guilty of the intent to murder was unquestionably Mr. Goldney ; for I solemnly assure you here, and elsewhere I have regularly sworn to it, (the Affidavit being attached to this Defence) that he did deliberately and three several times, (two of them, at the least, before he knew that I was armed, or had received from me any threat of violence,)

attempt, by pulling his trigger, to discharge his pistol at me ; and of the Affidavit referred to, a material fact was incidentally proven by his own Khidmutgar ; for I swore that I beheld sparks issuing from the lock of the pistol, and he has sworn that it *flashed in the pan*. Now, as there was some caked powder in the pan when the pistol was shown in Court, and as Mr. Salter stated that there was more than that in it when he received it on the 9th of August, it follows that it was not *that* powder which flashed. Even Mr. Goldney himself would admit that, in all his ignorance of what he called metaphysics ; and a second priming must therefore have been put in. As he admits that he snapped it once ; and that it did *not* flash, here is good presumptive proof that it was snapped twice, at the fewest ; and my oath that it was actually snapped *thrice* in the course of the conflict, and that my first discharge followed his second attempt (for how could I tell that he had not two pistols loaded ?) corroborated as two of the times thus unquestionably are, will probably weigh as much in favor of my life, as the oaths of any such witnesses against it.

The description of my second shot is so exceedingly incongruous, after the efforts of the principal, and the two assistant, supporters of the Prosecutor, that I am not soliciting any very great favor when I ask that my account of it may be permitted at least to keep their's in equilibrio. Mr. Goldney says he crouched or fled, or slunk, or stood up, or knelt---no matter which---behind the right side of his door, having thrown his pistol on the ground ; his Bearer swears that he retained his pistol (which indeed he says he only then took up) pending the second shot, and presented it at me from behind the door. The Khidmutgar relates a somewhat similar story, and both agree that he aimed it at me the second shot, while he himself acknowledges that he did so on the first ; so that it is made clear, among them all, that he was doing his best to shoot me upon both occasions, and I do most solemnly assure you that he was. When he first came out with his pistol I had not exhibited either of mine, nor given any the slightest hint that I possessed them ; but as soon as I suspected that he had armed himself to attack me, I of course endeavoured to do the same thing. However, one of my pistols having slipped quite through the hole made to let it go entirely into my pocket, and become somewhat entangled at the bottom of my trousers, I was compelled to stoop for its speedy extrication. The Bearer admitted that I did once stoop a little, but the fact was that my head was completely down, and on lifting it partially up before I had succeeded in disengaging the pistol, from a natural anxiety to see where Mr. Goldney was, and what he was about, I do most solemnly declare in Heaven's presence and your's, that I beheld him, within about four yards of me, standing across the threshold of his bed room door, and, without giving me the slightest warning, deliberately levelling his pistol at my person, and twice drawing its trigger, with intent to discharge it, and to take away my life, while I stood in that totally undefended situation before him. Gentlemen, he thus raised his hand, having first deliberately prepared his pistol, against the man whom he had before declined to meet in a fair and honorable field, after he had lent himself to an ungenerous scheme of outrageous insult ; and he thus endeavoured like a mean and foul assassin, to shoot, while unguarded, the very individual he had hesitated to engage on the proffered conditions of a manly equality !

On seeing my life thus endangered, and supposing that his pistol either hung fire, or would probably go off on a succeeding attempt, I did not wait the re-

gular extrication of mine, but hastily tore up the leg of my trowsers (the Court has seen the rent, and heard it proved by my servants to have occurred between the time of my having gone from home, and returned to it) and having thus possessed myself of my weapon, I did not rush in upon him, as even sudden anger at his unmanliness, without any previous intent to murder, might have prompted me to have done; and as, certainly, such intent to murder would have instantly suggested; but, as his servants were behind me, I passed round the couch by the dotted line 2 3. in this Plan No. 2. * and stopped somewhere about the place (I do not pretend to a measured accuracy) which the figure 3 denotes. From that situation, and as I cannot here swear to it, I do the next most solemn act, by praying of the Almighty to deal with me as I relate the very truth—I did, in the usual side-way position of one engaged in a duel, and with my face averted, return, for the first time, Mr. Goldney's repeated attempt to fire; and from the same place, and in the same lateral position, I returned his *third*, when he threw away his pistol, gave a percing yell, which I had no time to account for, and forthwith rushed violently upon me, and in the ensuing struggle my left cheek was somewhat severely either clawed, or bitten, though I cannot positively say whether by himself, or by a servant.

If any attempt should be made to argue that the powder you here saw in Mr. Goldney's pan, might have been part of the priming which the Khidmutgar saw flash, and that dampness might have hindered the whole from going off; I beg leave to remark on the improbability of that, by reminding you that the pistol had been kept in the driest, warmest, and least damp situation that any house affords.—viz: the bed where himself and the Native Woman slept; and that it was not therefore likely to have got caked, in the way *you* observed it, Gentlemen, by remaining for a week, or ten days, in that very dry locality. It mattered not what was the motive for having placed it there;—whether the simple one given by the Prosecutor, after his accurate researches, of a Moooolman girl being governed by a Hindoo superstition, appertaining to a bit of uncharmed iron (even the Hindoos have no such credulity, nor is it, at any rate, pretended that *powder* and *lead* formed ingredients of the mystery) or the more material one of protection against the yet dreaded bandit;—it mattered not at all; there the pistol was retained, and there it could scarcely by possibility have so soon got damp. Before I have done with Mr. Goldney's testimony, I shall in due time, farther demonstrate to you how little credit is to be given to the part of it that seems to be unfavorable to me; by presently showing some material variations between itself, and certain statements made by him elsewhere; but at the present moment, I think it right to mention, with reference to an oft pleaded excuse for his want of memory in what he was pleased to call *minor* points, (whether, for example, I advanced nearer to him, or not, for the second shot) that although a witness might render his accuracy obnoxious to suspicion if he remembered too particularly a number of matters of no great import; yet that his forgetting some, while at the same time he stores up others not more deserving of recollection, is to the full as suspicious as his not remembering any. This remark will apply to such witnesses, as Mr. SALTER, Mr. WILKIE, Mr. WILSON, and Dr. LEFSE, nearly as much as to the principal himself; but their respective shares of it has yet to

* Plan, No. 2. facing this Page.

be meted out. How, for example, came Lieutenant Goldney to remember the very position in which he first saw my head, and yet to forget whether or not it had a hat on ; — the expression of my countenance, yet not whether it was shaded ? The minute particulars of his half closing his door, when he screened himself behind it, and yet not whether a chick was up or down, at either side of the door-way ? Remembers (when necessary) that I was on terms with only two of the Officers ; yet subsequently cannot say that I was not on terms with six. That the accounts he heard, on rejoining, of my quarrels, prevented him from renewing our acquaintance ; but afterwards avows his ignorance of all their particulars. Now among these instances it cannot fail to be observed that the points forgotten, were just as easy of remembrance as the ones that were treasured up ; and I could adduce many other examples, of a similar unaccountable lapse of recollection, did I deem it requisite so to occupy the time of the Court. It exemplifies, however, one of the many respects in which I, and I alone, suffered from the conduct of *MAJOR HOLBROW* on the affair having occurred. Had he, instead of having converted himself into a Magistrate, adhered to his character of Commanding Officer ; and, instead of illegally imprisoning me, on an *ex parte* statement made in my absence, and partly on an oath he had no right to administer, assembled a regular Court of Enquiry, and thus ascertained the circumstances of the case ; there would not have been the opportunity there was for Lt. Goldney and his associates to prepare and concoct their evidence against me, so as if possible to avoid all contradiction ; and I should at this hour have been on more equal terms with my numerous opponents, than the original advantages which were yielded to them permit me now to be. The whole mode of my imprisonment was illegal, and I was entitled to a *habeas corpus*, and should have obtained one, too, had I not been desirous of the speediest scrutiny. By Mr. Goldney's own acknowledgment, it appears, that I was placed in still closer and stricter confinement after he had sworn the peace against me, in presence of the self-created Magistrate ; so that while on the information of a committed felony, I was, in comparison, only partially guarded, I was placed in still stricter and more arbitrary custody on the peace being sworn against me, though that part of the accusation wasailable, and no Civil Court under the British law could have put me in confinement for it, unless I could not have found sufficient sureties that I should keep the peace, the violation of which I was said to meditate.

I was closely and rigorously imprisoned *unheard* ; my friends and relatives were denied access to me ; even my written communications were read by those who were sent to watch me ; I lay there for nearly two months without being informed of what was laid to my charge ; and was denied all opportunity of uttering a word to Major Holbrow in my own vindication. And here I cannot refrain from contrasting the coarse and unfeeling rudeness of my treatment by the Officers of my own Corps, placed over me at Sultānpore ; and the humane, indulgent, and gentlemanly performance of a most unpleasant duty, by those appointed to my guard since my arrival here. The former (particularly Lieutenants *Oldfield* and *Wilson*), thrust themselves into the very room I sat in, and the latter (Mr. *Wilson*) listened to the conversation between myself and my relations ; and read my letter to my Brother-in-law, for fear that it, or they, as he said, should be

of an improper tendency :---the Officers at this Station were delicately careful to avoid the least appearance of constraining me by their presence, and I take this opportunity of assuring them collectively how truly and gratefully I appreciate their consideration.

Such proceedings as those of Major Holbrow are abhorrent to the just laws of our country, and there is not a robber, or a murderer, committed to Newgate, who is not heard by the Magistrate in his own defence before he is committed; and afterwards allowed to consult with Counsel, and to arrange his evidence. But the Commanding Officer refused what the Chief Justice of the King's Bench would not, on due application, have refused to the meanest Prisoner who considered himself arbitrarily dealt with ;---he refused to see or hear me ; and even closely imprisoned, in his Quarter Guard for the space of two months, a Pundit whom he suspected of having been well inclined to me. He imprisoned him, like me, under fixed bayonets ; he never sent in any charge against him ; and when called upon here, by the General Commanding, to explain that part of his strange proceeding in the case, he could not give any satisfactory reason for it, because he knew he had been influenced by hostility against me ; and he suffered a severe reprimand to be given to him, because he had no sort of excuse to offer in alleviation of his harshness. Such was, briefly, the manner of my preliminary treatment ; while the individual whose own confession has demonstrated him to have been (to speak it with mildness) at the least as criminal on the occasion as I was, was allowed to go all this period at liberty, with every opportunity of preparing his case, and with every disposition to disseminate direct, or by his instruments, the most scandalous falsehoods against me through the Country. To the very last he availed himself of his freedom, to compass my conviction *per fas aut nefas* ; for he reluctantly acknowledged, because he dreaded to deny, that he left this Court and communicated the substance and purport of his testimony to his other, theretofore, unexamined witnesses ; and although he denied having spoken on the subject to his Native Woman (whom he long knew I had summoned) he had not the nerve to persist in the denial, in the face of the risk he ran of early discovery, and accordingly confessed the next day, that he had spoken to her also. He did this, too, in violation of an explicit promise made by him to the Deputy Judge Advocate that he would *not* communicate with her on the subject at issue ; and he deprived me of her evidence on material points that I had ascertained she would have testified, but on which I feared to question her, after his acknowledgment, and knowing as I did how easily those people were swayed and influenced by their European protectors.

Thus, Gentlemen, you see my life depends wholly on the belief that you will give the adverse portions of a person's testimony, who doubly perjured himself in this Court, and who deliberately violated his solemn promise *out* of it ; for besides the assurance which the Judge Advocate received from him, that Officer (very properly and considerately, I must say) sent a written communication to Mr. Goldney and all the other witnesses, some time before the commencement of the trial, requesting, and as far as he could, commanding them not to discourse about the subject at all ; and each of them in acknowledging the receipt of the intimation, tacitly, but virtually promised to attend to it ; and yet every one of them broke through the engagement, and listened to, and conversed upon, the evidence which

their principal had delivered before you here. How could I, when I had ascertained *that*, and was aware of their generally hostile feelings, venture to call them in, upon any material subject, on my Defence? Did I not perceive that they were determined to stand, through thick and thin, by Mr Goldney; on whose success they felt that their own good names in a great degree depended; and accordingly they forgot whatever would have made against his cause, and tenaciously remembered what might tend to injure mine. Mr. Salter, his oldest and most intimate associate, in *evil* certainly, as I have hereinbefore hinted at, but in no *good* that has yet been made apparent, pretended he could not speak with even tolerable certainty to his handwriting on the caricature. He could not say that he believed it *not* to be his; but he had been premonished that Mr. Goldney had sworn it was *not*, and therefore it was not Mr. Salter's cue to positively discredit him. Neither could this last remember whether the ball, which he extracted with his own hands, had gone straight or slopingly into the wall. He could not discriminate the drift of the question; but as it came from me he concluded it had some sort of relation to my clearance, and not knowing which side would be the best to answer on, he had recourse to his forgetfulness, and *believed* it might have gone rather straight than otherwise! This was he, who took notes of all he saw and did on that morning; who could even tell that the powder shown to him in the pistol-pouch in Court, was a little less than he formerly saw there; but who yet forgot whether the bullet, the place of entry of which he had measured by inches, had taken a sloping, or a straight direction!

Mr. Wilson could remember that for three weeks, that he was ill in my house, I had not gone into his room, but he could not remember that his disease was deemed so contagious, that no other Officer went near him all that time; and that even the Books of the Society, and the Mess Newspapers, were sent to him, the last of all for fear of the contagion that might else have taken place. Even had it been true that I had kept from his room, it would not have suited his purpose to have given a good excuse for it; because he had assigned my absence as his reason for having afterwards renounced me, and his object was to depict me as unfeeling and neglectful. The truth of that part of the story, which it would not at all have suited him to tell, is simply this. In point of mere fact he was not forsworn in saying that for the space of three weeks, in the course of his illness, I had not paid a visit to his room; but he wilfully suppressed what would have easily explained it. He left the Station on or about the 4th of May, and I might, for aught I know, or that it signifies here, have discontinued my visits for even more than three weeks before that particular period; for I was placed in arrest on the 17th of April, and I think it was about the 7th of that Month that Ensign Pattenson had offered him, on my behalf, the repayment of the price of his share of the Bungalow, if he desired, as I had been told he did, to quit it, and as it is in evidence he actually did. After that of course, I discontinued my visits but then he was convalescent, and by Dr. Leese's evidence the disease was not considered, for more than *one* week, dangerous while, therefore, he barely stated a circumstance, which by refraining from elucidating it he wilfully left to

impress you with a conviction of my inhuman neglect ; he purposely suppressed the fact on which I can safely pledge my honor to this Court, that up to about the date of Ensign Pattenson's communication, whilst no other Officer in the Corps, with exception of Mr. Leese, ventured to go near him, *I did*, almost without a single day's intermission, go to visit, tend, converse with, and read to him for his consolation and amusement. In like manner he could remember as much of the Target Practice as the Prosecutor desired (his last, you will observe, never thought it worth while to take away from the horror he wished that part of his opening narrative to imbue you with, by mentioning that Mr. Wilson had taken a full share in the "*drilling*" of Major Holbrow's asserted portrait, though *he* first discovered the likeness) but he could *not* remember that he had himself fired more than two or three shots at it, though he declared I did ; and yet, if *I* am to be at all believed in this matter, it was I who fired the fewest shots, merely to try my newly obtained pistol, and Mr. Wilson, who fired at least half a dozen rounds at what he owns he considered to have been the charcoal lineaments of his Commanding Officer ! Mr. Assistant Surgeon Leese put the affair of Mr. Wilson's illness and disorder sufficiently right, to clear me of any unfriendly negligence ; but even *he* was so influenced by the party feeling that existed, and was so constantly nourished, against me, that his candor deserted him, when he was asked as to the terms that subsisted between himself and me ; for his answer was the cold one of " yes, we were on *speaking* terms---I never had any *dispute* with Mr. Torckler ;" and the words "*speaking*" and "*dispute*" were so markedly accented as to prevent any of you, I am certain, Gentlemen, from imagining that our acquaintance, was more than very very distant. Indeed the phrase of being only on "*speaking* terms" is never understood to convey more than the bare civility of unfamiliar acquaintance. That Dr. Leese *might*, however, have been somewhat warmer in his answer than he was, and yet not have risked an untrue assertion, may be sufficiently collected from the following two short notes, addressed to me as recently as the 8th of August. The first was consenting to take charge of my Bungalow, a favor seldom, if ever, asked or granted between distant acquaintances.

" MY DEAR TORCKLER,

I will make enquiry for the Mess Directory, and send it, to you if Captain Wilton has not taken it away.---I shall be happy to take charge of your Bungalow : and to make some arrangement about inhabiting it ; should your absence be prolonged to *Ensign Pattenson's return.

8th,

Your's Sincerely,

JNO. LEESE.

P. S. *I return the accompanying book with many thanks.*

The other was accepting the present of a book from me which, by the foregoing note, he had returned through mistake, and was couched as follows, on the self-same day ; for though the dates of the notes are simply the 8th, yet there is evidence to show that it was on the 8th of August I had laid my dawn for leaving Sultampur, and hence the approaching vacation of my Bungalow, to which the first note bears reference.

* "*Beyond*" perhaps he meant to say, as Dr. Leese was at this time renting a Bungalow of Ensign Pattenson, who was absent on leave to the Presidency.

"MY DEAR TORCHLER,

" I was not aware of my good fortune; and have often accused myself for detaining the Book so long. I accept it most thankfully.

8th

Yours Sincerely,

JNO. LEESE.

Surely, Gentlemen, the man who wrote in that strain, who bestowed, and accepted, those amicable obligations, might have safely and truly deposed to having been tolerably intimate with the person referred to. That he did not do so, does me no great harm, but it makes very apparent the spirit that dwelt, and still dwells, throughout the corps against me, and the little chance I had of getting its Officers to speak for me, instead of for my adversary.

Lieutenant Wilkie was called in, partly with a view to prop up the latter's credit, in the matter of the two Officers to whom, by name, he had limited my intimacy, on his own rejunction. Mr. Wilkie could however afford him but little consolation; for he chose to forget all about as many as he could not positively put down against me, and could not even remember the fact as concerning Lieutenant Macdonald who was his own chum at the time;---but the cause of that forgetfulness was the fact of his chum having been then on good terms with me. It is probable enough that every Officer knows the terms on which his own chum is with their Brother Officers, and accordingly it is probable that Mr. Wilkie knew it in this case; but he knew also that it would help to convict Mr. Goldney of perjury, if he owned it, and therefore he became opportunely oblivious of so marked a *contre-tens*. This examination offered one of several instances---wherein the Prosecutor endeavoured to impede the cross-examination by most unfair objections, in regard to which the Judge Advocate should have taken my part, instead of leaving me, in a point of legal practice, to my own resources. Although he had (the Prosecutor, I mean) taken up an Army List, and gone through almost every name in the Corps, to learn from Mr. Wilkie the terms I was on with 'A. B. C. D. &c' he chose to demur at my cross-examining him as to his knowledge of those individuals respective sentiments, and when the Court appeared to think (reasonably enough, I am ready to own) that it would be more to the purpose to call in those individuals, and question themselves as to their own acquaintance with me, the Judge Advocate abstained from reminding you that I had at least as great a right to examine a third person as, and even a greater right than, the Prosecutor had to commence a similar practice, for that the cross-examiner was entitled to follow the original one over whatever path the Court had permitted the latter to have travelled. But although I remember several, and have noted some, most glaring instances of the Judge Advocate having argued law points against me; and read from law books till he came to a part which would have favored me, and there* ceased his reading, and declined continuing it when requested to do so---leaving me to get it read by another for myself---although I remember too, 'his

* N. B. Vide Page 75. where the D. J. A. G. quotes from Hawk P. C. 63, 64, also the marginal note connected with it at Page 77. and in reference to which latter, the following is a remark made in writing by the D. J. A. G. Lieutenant Palmer:--

"These words," (that is, those contained in the marginal note) "not in the Copy sent to the J. A. G. if I mistake not, but I have no objection to them."

W. Y. F.

(Signed) W. F.

quoting even inapplicable cases in favor of the Prosecutor, and trying to make them *seem* applicable in your eyes to the point disputed (I shall instance one or two of them presently) I do *not* remember a single case, in which he put in one word for my side of the question : nor one solitary occasion in which he tried to aid me. In endeavouring to qualify Mr. Goldney's improper conduct, for example, in having informed the remaining witnesses of the evidence he had delivered, he asked him a question, which I do not hesitate for an instant to pronounce ridiculous, as to whether he, the witness, was lawyer enough to know that in the Civil Courts both male and female witnesses were allowed to be present during the progress of a trial. This question involved that species of misrepresentation, and a very bad species it is too, which is caused by a suppression of important circumstances ; and nothing but an observation of some surprise from the President made the whole truth appear. As usual, in support of the Prosecutor, the Judge Advocate resorted to his cases ; and then the most relevant one he could produce, showed that while the King alone had a *right* to insist on the withdrawal of all witnesses, but the one who was actually in the box, the Judges hardly ever refused in criminal cases to give a like order, on the application of the defendant's Counsel. The fact is, he knew that long and frequent custom had converted the indulgence into almost as much of a right, as the right was itself ; and at all events he knew that this Court had, at the outset, directed the witnesses to withdraw ; so that the attempt to palliate Mr. Goldney's conduct, by such a miserable argument as the question introduced, served only to demonstrate the Judge Advocate's resolve to give me no advantage of which he could deprive me.

Another example of his readiness to force in bad cases, in the absence of good ones, occurred on the question of whether or not I was to be made to proclaim that I had finished my cross-examination of one of his witnesses. The case he adduced went to show that the Judge who tried it, conceived that the opposite Counsel should have that much information ; but then the decision referred to a witness who had not been summoned, nor was required, for the Defence, as was the fact in this case ; and so far was the Judge Advocate from producing any argument on my side of the question, that when I discovered a ruled case in one of his own books, which showed that I had a right to cross-examine the same person on the Defence, he actually tried to weaken it by putting a wrong interpretation on the legal phrase *report*. It is "*reported*," said the writer ; and the Judge Advocate was pleased to state that that meant merely an *on dit*, or an "*it is said* so and so," though he knew very well that the law term "*reported*" had nothing less than an authoritative signification. And at last when I showed him a former opinion of his own, which supported my part of the argument, he absolutely disowned, and said he now had altered it !

Gentlemen, if any part of this exposition makes his conduct tally with the "*stern impartiality*" he said compelled him to depict me as he did in the Opening Address, I must confess my ignorance of what impartiality is, and leave the triumph of greater knowledge in the hands of the Prosecutor.

To return from this digression (which I could not avoid, unless I chose to make assertions that I could not illustrate) to the testimony of Lieutenant Wilkie. Besides all his forgetfulness of events, that had been repeatedly talked of among them all, since the 9th of August, he had to ad-

mit, in the end, having violated a *pledge of honor* which he had given to Mr. Wilcox, in regard to my note, demanding satisfaction for the insult on the ground. Mr. Wilkie was made to admit in cross-examination his violation of that pledge, reduced even to his own scale, as far as regarded the use he had allowed to be made of his own name in the subsequent combination. In addition to this, Mr. Wilcox positively swore, and he stands uncontradicted by equal testimony, that the pledge which Mr. Wilkie at that time gave him was not in any way saddled with a single condition, but as a question put by the Court to Mr. Wilkie, asking whether Mr. Wilcox had not requested him to communicate the contents of the note to the parties it named, making him believe that by some, or all, of you, Gentlemen, the nature of the promise and of the subsequent breach of it, was much misunderstood. I beg permission to inform you, that the pledge was *not* that Mr. Wilkie would not *communicate* its contents to the officers in question, which was the very thing I intended him to do; *but* that he would not *give up* the note for the purpose of any *public use* being made of it; and this pledge he confesses that he violated; after making a slight resistance which he did not think worth while to put upon durable record, and in spite of which he took, all along, an active and personal share in the preparation of the insult.

Whether you will consider his last admission that *most probably* he wrote a letter to a friend, containing his wish that I might be hanged on this occasion, as sufficient to establish that he did so, I of course am by no means able to divine; but his own admission to the above extent, contains a great deal of presumptive evidence that he did so, although he nevertheless came into this Court to assist in the accomplishment of his most humane expectancy,---by *swearing* much against, and but little for, my cause. However, I shall here introduce, as a part of my narrative defence, a short extract of a letter from a Gentleman who *saw* that generous epistle. Nothing that I here offer, is, of course, what is called *evidence*; but all that is adduced in a defensive address is taken to be the fact, so long as it is corroborated by the recorded testimony, and the Prisoner's own statement is always valued accordingly. The letter was written by Lieutenant Hodgson of the 12th N. I. and I could if necessary in a moment establish the hand writing to be his, and he had abundant opportunities of forming his judgment.

(Extract) "Disclaiming all intention of infringing upon the rules of propriety and decorum, without the slightest wish to hold up a body of Officers to censure, or to place them in an unfavorable light, I must yet conscientiously and solemnly declare that ever since I have been acquainted with the 4th Regiment N. I. a party feeling *has* existed in the Regt. to Lieut. Torckler's prejudice. Indeed the open and undisguised manifestations of this dislike, appeared to court publicity, for they were uttered often in my presence by several individuals of the Regiment, nor was there any concealment thought necessary of these rancorous expressions of hatred. The most apathetic, the most uninterested person could not help observing, that there was a strong party *bis* against Lieut. Torckler in the Regiment, I should fancy any Officer in the 12th Regiment, could corroborate what I have written above.

I never heard any well defined or tangible charge advanced against Lieut. Torckler, and for so indiscriminating a feeling of dislike, I own I was often struck with astonishment, that no specific cause was ever urged, as a plea for the existence of such a feeling on the part of those Officers. I candidly affirm that it appeared to me that the dislike was chiefly founded on those principles, which are so facetiously animadverted upon, in the defence of that noted individual Doctor Fell.

I read a letter the other day from Lieut. Wilkie (an Officer of the 4th Regiment Native Infantry,) giving a partial account of the affair and as this was made a Public use of, and served as a criminatory document to Lieutenant Torckler's disadvantage, I shall view it in the light that society allows, for when a paper is circulated publicly, for specific purposes, it tacitly admits the right of criticism, and of such undoubted right, I shall avail myself, as the means of affording you some idea of the spirit that exists. In this letter the writer throws off all reserve, all wish to preserve decency or propriety. In this letter not one extenuating circumstance is advanced in Lieutenant Torckler's favor, but the malignity and party feeling of the writer has betrayed him into the foulest language which he gives as the voice apparently existing in the Regiment, and unintentionally he casts the deepest reproach upon himself, for in using this expression "*and I hope he will swing for it,*" he tacitly acknowledges how destitute he is of every Christian feeling---how dead to the common impulses of propriety and humanity."

Such was the letter that Mr. Wilkie disseminated; and such the character of their intended victim, which was industriously circulated throughout the Army in anticipation of this trial; and more or less of which I doubt not the members of this Court, or several of them, had heard, before they were directed to meet upon my trial. I do not mention this last point, as a grievance, because I feel it to be (without thanks to my enemies) directly the reverse: as the very evil reports which men of honor might hear of one whom they afterwards found themselves necessitated to judge, would have the beneficial effect of rendering them doubly anxious to be swayed by nothing of so doubtful a character; and that, thank heaven! is the fortunate situation in which I stand before you.

Such, then, is Mr. Wilkie; the person rather injudiciously brought into Court to uphold the sinking credit of Lieut. Goldney.

Officers such as Lieut. Macdonald, Ensign Maitland, Hill, Pattenson, and others, with whom it was ascertainable that I had not quarrelled at the period in evidence, were not called in for corroborative purposes; and though the keeping clear of *them*, might have been suitable enough to a private Prosecutor, anxious to condemn the Prisoner by all unworthy means; it was scarcely in keeping with the broad duty of a public Prosecutor, and also a Judge Advocate, desirous of nought but the elicitation of truth (conformably to the wishes of those he represented) and not regarding upon whose side it might appear---provided public justice, as distinct from private pique, should be satisfied by the enquiry.

I have but little more to say on the subject of the evidence. That of Major Holbrow and Captain Caley, related in no material degree to the matter of the indictment; though the eagerness of the former to attribute to a recent discharge of loaded pistols (for his answer referred to the occurrence of the morning) a little damp, powdery, appearance on the inside of the locks, which could as fully have been accounted for by a flash in the pan, or a puffing off of powder to try the freeness of the barrel and the touch hole, strongly marked the spirit which ran through them all, to attribute every thing I did to the worst possible motive. The Bearer and the Khidmitgar, followed the example of their master, in giving evidence to the Court which materially varied from their former statements; and that fact will sufficiently shake the hostile portion of their testimony; for the law looks upon such deviations as affecting the credit of what has not, as well as of what has been diversified by the witness. To give these contradictions the necessary effect, I was anxious to ascertain whether my case would be affected by the decision which this Court had come to, against similar proof, on the trial of Mr. McGrath, and I was astounded to hear the Judge Advocate proclaim that heaven and earth were not farther apart, than were that instance and mine, in point of fact and principle. I had a right to quote any trial that I thought appropriate, and none could be more so than what this same Court had but recently sat upon. Mr. McGrath, it seems, was accused of having assailed Mr. Richardson in a manner denoting ungentlemanly and disgraceful conduct; and no proposition could be more self evident than that the ungentlemanliness of the act depended entirely on the collateral circumstances, and particularly on the cause of it. If it were done in self-defence, it ceased to be degrading; and it was therefore not incompetent, but requisite, for the Prisoner to prove that it *had* so been done, by adducing the best possible proof of the fact---to wit the free admission of the opposite party. If he made the admission of his own accord, in evidence, why all well and good, and farther proof had been obviously superfluous. But if he either denied, or suppressed, that admission, no law in the Statutes could bar the testimony of those who had previously heard him thus acquit the defendant.

In my case the Charge is for having assailed another in a murderous manner---that term supplying the place of ungentlemanly in the other---and its having been murderous, or not, is a question for the jury, to be inferred from the admitted cause and the concomitant circumstances;---just like the disgracefulness on the former occasion. Chairs and hands were employed in the quoted case, pistols and hands in the one before you;---the *nature* of the proof being in both cases the same, and the only difference being their respective degree of seriousness. The Prisoner was denied, in the former, the privilege of calling in evidence to prove a statement previously made, by the chief witness against him, which differed from what he would allow upon his oath, because the Judge Advocate chose so to construe the law, and to object to a cross-question that was designed to lay a ground (as the practice requires) for the eventual introduction of the defensive evidence. I, naturally fearing a like decision, in a similar case, procured legal opinions from the first authorities in Calcutta, which showed that the Judge Advocate had led the Court astray, even taking the former trial upon his own account of it. Mr. Pearson, the Advocate General; Mr. Compton, the late Advocate Ge-

neral, and Mr. Longueville Clarke, a Barrister of high reputation, and proportionate practice ; severally concurred in the following opinion, which I give you first in the words of the Advocate General.

A. represents the witness to be discredited ; B. the Prisoner ; and C. and D. the persons in the relation of Major Dick and Lieutenant Hughes on the trial of Mr. McGrath. Mr. Pearson says, " C. and D. are competent witnesses, but I conceive a ground must be laid for the admission of their evidence. A. on his cross-examination should be asked whether he did make the declaration imputed to him, or any other of the kind. If his declaration was in writing the passage should be read to him, in order to avoid uncertainty ; and if he denies the declaration then C. and D. may be called to contradict him."

Mr. Compton says : " I am of opinion that B. is entitled to call C. and D. as witnesses to prove the admission or declaration of A, whether the same was made orally or in writing ; on oath, or otherwise ; but to make the evidence admissible, A, must be asked whether he did not make the admission or declaration. If he denies it the witnesses may then be called to contradict him."

Mr. Clarke says :---" A. may be cross-examined to any statements which he may have made relative to the matter before the Court ; whether those statements have been made on oath, in conversation, or in writing. If in his cross-examination he should deny them, C, and D, may be called to contradict him."

Contrary to all these opinions, and to any book of law that he ever could have read, the Judge Advocate, whose interpretation of law is now to be your guide, objected to the cross-examination here spoken of (and which he ought to have known was lawful, independently of the examination in chief) on the part of Mr. McGrath ; and has now declared that case and this to be as wide as the heavens and the earth are asunder. A miserable solar system we should have had at this day, if Sir Isaac Newton had not given the actual distances a good deal more correctly than what the Judge Advocate's metaphor has boldly laid them down !

As he has yielded the question here, however, with his saving clause of the *toto calo* variance, I am at liberty, on the strength of Major Holbrow's testimony, to show that the Bearer and the Khidmutgar have both contradicted themselves, as well as their master ; and that accordingly only so much of their evidence is good, as, contrary to their bias, goes to my exculpation. The Bearer declared before Major Holbrow (as you may see from the written account of it on the record) that I had pushed him aside before I fired at his Master, but he swore in the Court that up to the period of the struggle on the Couch, neither he nor I had ever touched each other ; and he moreover, denied having ever made a different statement. The Khidmutgar declared, before Major Holbrow, that his master only *half* closed the door through which I entered the bow room, the moment before I fired ; but he swore in evidence that his Master *wholly* closed that door and denied ever having stated the contrary. Here are two palpable and undoubted contradictions ; and the Prosecutor cannot do his witnesses any good by showing that they also made statements agreeing with their own, for it is laid down (and I shall show it to him if he disputes it) that on such proof of variation, the person calling the witness can not set him up again by proving that he made other declarations out of Court, which supported the one he subsequently made before it ; so he must just allow them to stand as they are, and do me much service which I hope he will not grudge me, though I fear he never intended to produce the benefit.

But a series of instances of palpable and material contradictions, between the three principal witnesses in support of the Prosecution, if enumerated together, will probably strike you more forcibly than if each were left in an isolated position. Mr. Goldney has sworn that I laid my hand upon him before the firing; though not till after he had laid his upon me. Both the servants swear as positively that I did not so much as touch him before the struggle at the couch. He swears that he screened himself behind the half closed, *right hand* leaf of the door. The Bearer agrees as to the leaf, but described it as quite shut to; while the Khidmutgar distinctly affirms it was the *left hand* leaf his master used to screen himself, and that it was not half, but entirely, closed. Mr. Goldney swears that the second ball passed through the right hand venetian (they all, save Mr. Salter, used the terms right and left, supposing themselves to have been fronting towards the bow room, you remember) and Lieutenant Salter confirms that statement. The Bearer declares that it broke the left venetian; and the Khidmutgar swears, *per contra* again, that it perforated the right one.

The plan (Mr. Goldney's own you observe) contradicts himself, with reference to his account of the bedroom door leaf, and supports, in the same respect, the oath of the Khidmutgar. Mr. Goldney swears I was nearly opposite to the right of the bedroom door at both shots; Mr. Salter corroborates also a similar position; and so does my own sketch of my then situation. But the Bearer and Khidmutgar both swear I had barely entered from the verandah on the first shot, and the former places me behind one of the pillars which are near the entrance.

Mr. Goldney states that on first coming out of his room, he found me standing in the verandah, or bow, room. The Khidmutgar says I had not then entered it, and the Bearer also, in his opening narrative, swears that at most, I was only *about* to enter it. He adheres to this both in his cross-examination, and in the one by the Court; and they both represent Lieut. Goldney as having in the first instance, come to me at the verandah door, outside of which they both say I was at that time waiting. The Bearer deposed to Major Holbrow, that from the couch struggle the *servants* parted us. He swore in evidence that they were quite unable to do so; and that a Sepoy effected it, upon their utter failure. Mr. Goldney says that the chick was rolled up, and again he knows not whether it was or not, but that there was no cloth upon it. The servants say it was down, and that there *was* a cloth on it. His woman says it was down, and had no cloth on it. The Khidmutgar swears he was in the bow room at the period of the firing: his Master gives you to understand that only a Bearer was there, and the Bearer rather confirms that assertion. Mr. Goldney swears he fired at me every bit as soon as I fired at him; and that he drew forth his pistol for that purpose, *before* I attempted to have recourse to mine. The servants state that he had no pistol when I first fired, and one of them declares he was running away at that moment. He says he relinquished his pistol after the first discharge of mine: the servants say not till after the second; and one of them described him, by action, as aiming it at me from behind the door leaf. He says it did not burn priming; the Khidmutgar

positive that it did, and I have elsewhere sworn that I saw the sparks from the flint. He swears he ordered his servants never to admit me into the house ; the Bearer swears that he gave no such order.

He says in a copy of his original * Statement, authenticated by himself, and forming part of your Proceedings, that the depositions of his servants corroborated his own ; but it appears from a reference that those depositions, confused and contradictory as in themselves they are, do really no such thing, especially in his important allegation that I pulled open the Zenanah door. In that same statement he first says, I was *two or three* paces from him, when I showed my pistols, and instantly fired one ; and subsequently says that at that moment, I was *five or six* yards from him, and in his evidence here, he occasionally varied from both those distances. In his statement he says I seized his arm in the *Verandah* before he retired. In his evidence he says he had retired first into the bow room, and that I followed him and seized his arm *there* ;---while his servants affirm, on their oaths, I did not seize it any where ! In his statement he says I recoiled *before* I exhibited my pistols. In the narrative part of his evidence he says I pulled them out first, and recoiled afterwards ; and in cross-examination he says I did not (that he perceived) exhibit them till I had retreated a distance of nearly twenty feet, to the opposite wall of the verandah room !

He swore before Major Holbrow that he firmly believed I fired at him with intent to kill him ; he afterwards could not take upon himself to swear that my pistol was positively levelled at his person, but only that he thought, or had reason to believe so ; or that God alone knew ; and altho' the Court consented to receive that Affidavit, on the part of the Prosecution, it afterwards refused to let me cross-examine Mr. Goldney as to his conviction of that identical intent, and overruled my question, on the opinion of the Judge Advocate that it was not a legal one ; so that a material averment of Mr. Goldney's against me is recorded in chief, and I have been debarred from cross-examining respecting it, though it has never been before questioned that a cross-examination is entitled to extend itself to every part of a witness's declaration, no matter whether it have been given in writing or in words, and although I had actually cross-examined on other portions of the same affidavit. The Bearer swore the Sepoy picked up all the three pistols in the bow room, and *there* offered them to me, and that I took *two* of them out of his hand. The Sepoy himself declares that he picked up only *one* pistol, and that I was *out* of the house when he brought it to give me. The Judge Advocate cross-examined the Sepoy to learn if I had asked him about the circumstance. To be sure I had, and will he say that I had not a right to do so ; or that he himself did not communicate with, and interrogate any of, his own witnesses before they gave evidence in presence of this Court ? But I merely asked the man what he *did* remember, in order that I might neither waste the time of the Court, nor injure my own cause, by the production of witnesses, who, like several I have named, were deprived of recollection. Mr. Goldney swears positively in answer to two questions by the Prosecutor that he did not take his pistol out till he saw that an intrusion had been commenced by me into his bed room, and that he did not advance with it to

* Vide Appendix, No 7 G. Page 43.

the door, before he perceived that I was actually entering. On the other hand, both his own servants swear positively and consistently, that I did not go into that room, did not touch the door of it, and was never even nearer to it than four or five paces; and I also declare most solemnly, that I neither opened, nor attempted to open, nor ever dreamed of entering it. Mr. Goldney swore I had ordered his trees to be lopped: on cross-examination he denied that he had sworn so, and on this word being referred to, he made out that he did so on hear-say from his gardener! The above are only a portion of the contradictions, of each other, and of themselves, that have been made by three or four of the principal witnesses regarding the particular event which is connected with the Charge; but I could enumerate twice as many, if I referred to *all* the witnesses, and to *all* the evidence.

And now let me ask you, Mr. President and Gentlemen, Members of this just and honorable Court, whether it is upon vague and falsified testimony such as this, that you are to be called upon to convict me of having meditated murder; for of that most heinous and abhorred offence, or of nothing at all, must you find me guilty, and sentence me to death, on the shameful and sanguinary evidence that I have instanced. "A witness, says Mr. Tytler, who amplifies his testimony, unnecessarily enlarging upon circumstances unfavourable to a party, who seems to be gratified by the opportunity of furnishing condemnatory evidence, or manifestly betrays passion and prejudice in the substance of his testimony, or in the manner of delivering it, is to be listened to with much suspicion of his veracity." Now, if any one who observed Mr. Goldney's eagerness to introduce matter that had no connexion with malice towards himself (such as affairs relating to Major Holbrow and me; the alleged disgust of other Officers; and much more extraneous matter of the sort) or heard his expressions of contempt when alluding to me, such as "that man" &c.---or witnessed his eager manner of speaking against me, and representing me as being regarded by every one in the Regiment with perfect abhorrence:---if, I say, any such individual, who, having heard and observed those points, will not consider the words of Mr. Tytler as applicable to Mr. Goldney. I confess it will excite in me exceeding great surprise. In a greater, or less, but in no very small, degree to any, will the description apply to the remaining witnesses on the Prosecutor's side.

It will render my Defence more connected and complete, if I introduce into the body rather than attach to the end of it, the following testimonials of general character and of so much of my conduct as appertains to the Louisiana part of this investigation. I do not, of course, offer them as any more forcible testimony than what the unsworn words of Officers of strict honor may in your opinions make them; but lest their somewhat general nature of expression might be hereafter used to apply them to individuals not immediately concerned in this transaction, I here declare that I do not intend them to convey a description of the feelings and sentiments of any Officers, but those adverse ones who have been summoned to give evidence with a marked bias against me; and with that limitation, I trust, the Court will not be disposed to deprive me of their benefit in so great a crisis. Both letters were sent for my use spontaneously by the writers, and the Court will perceive how entirely they accord with the evidence of Mr. Sandeman, on the same subject. To have summoned the subscribers, would have entailed more in

convenience on themselves, and on the Service, than I had any desire to do. and a like consideration induced me to dispense with Lieut. *Bennett's* *attendance (he to whom Mr. Wilkie's humane epistle was addressed) though a *viva voce* examination would in all probability have much refreshed his memory, in the remarkable lapse it appears to have committed. The first of the above alluded to letters is from two Officers who were at Loodiana, at the same time I was, and it runs as follows.

No. 1.

NUSSERABAD ; NOVEMBER 6TH 1829.

MY DEAR TORCKLER.

Directed solely by motives of justice and humanity, we the undersigned do solemnly affirm that an almost general hostile feeling, did to our knowledge (while cantoned for upwards of 2 years with your Regiment at Loodianah, positively exist in the 4th Regiment Native Infantry, towards you.

Though we often witnessed the manifestation of such a feeling, we declare that we could never satisfy ourselves that any just cause for it existed.

We think it a duty however to those who did refrain from such conduct towards you, to specify once more that it was "almost general" possessed of this knowledge we humbly deem it right to apply it to your benefit. Your present situation doubtless requires it from us as Brother Officers. The question of its utility, and your application of this present letter rests entirely with yourself.

Believe we remain,

To

LIEUT. TORCKLER,
4th Regiment N. I.
CAWNPORE.

}

Your's Sincerely,
MY DEAR TORCKIER
J. S. HODGSON, Lieut. 12th Regt N I.
J. P. MULLINS, CAPT. 12TH N I.

The next is from an Officer, who not having felt warranted in putting his name to so full a testimonial, because he had not possessed the same extensive means of information, gives his own opinion in a separate form.

No. 2.

MY DEAR HODGSON.

I am very sorry that I cannot attach my signature to your letter to Torckler, for after my arrival at Loodianah a considerable period elapsed before I became much acquainted with the Officers of the 4th Regiment; for some time however previous to our leaving the Station, as I expressed to you the day before yesterday, I certainly thought that there existed a great deal of ill-will to Torckler in his Corps, the reason of which, I never could ascertain, and cannot now conceive, for I saw him frequently, and always found him very gentlemanly and in no way quarrelsome. Pray give him my kind regards, and say how much I regret his being so unpleasantly situated. But that I sincerely hope, and in my own mind feel convinced, that he will be honorably acquitted of the crime laid to his charge.

Your's Sincerely,

7th November.

A. BARCLAY.

I have, now, Gentlemen, but a few words to address to you, regarding the principle by which it seems to me you can alone be guided in considering of your verdict. There is but one single and narrow point laid in the Indictment, upon your view of which my guilt or my innocence must, in your opinions, wholly rest : and that is the *intent to murder* which is averred to have swayed me. If you do not think it fairly and undoubtedly made clear, after considering all the circumstances attending the transaction, that I went to that house with a preconceived design to murder Mr. Goldney, or that I formed such design after I reached the house, and *before* he assailed me with his loaded pistol (for *after* this last period the intent was clearly his) and acted throughout the interview in a manner most obviously in unison with that one design ; you must acquit me by the oath that you have taken. Should you be disposed to say that I might have acted more prudently on the occasion than I did, I implore you not to be too far led to say so, by the wisdom which you yourselves have acquired from this investigation ; but to remember that when I acted as I did, the result was out of my knowledge ; and that no man would fail to act over again more wisely, if the occasion had once more to arise, and if the experience of the past might be then allowed to guide him. But it is not to the purpose, whether I acted with discretion, or with rashness ; nor whether I went to get an ordinary explanation, for an almost inexpiable insult, or to demand a duel had that alone been denied. Whatever my intention was, I have satisfactorily proved to you, by the best of all evidence, that I had confined it most scrupulously to my own breast, and that Mr. Goldney's own rudeness and impatience gave me no opportunity of disclosing it, unless it had been murderous, till he assailed me himself with a loaded pistol, and compelled me to stand upon my instant defence. Gentlemen, if any of yourselves had offended another, and that other came uninvited to your house, you surely would not suspect him of a design to *murder* you ; though you could hardly conceive him to have come on an amicable visit. In fact you would at once take for granted that he came for an explanation of the insult he had received ; and whether you chose to listen even to a word from him, or not, you would not be authorized, nor do I think you would attempt, to go deliberately into an inner room, to procure a sword or a pistol, for the purpose of stabbing or shooting him if he quitted not your house ; although up to that moment he had not offered you any terrifying violence, nor threatened you by words, nor given you any reason to believe that he was armed.

It is laid down in all the Books that treat of Criminal Law, that no act of shooting will amount to a capital offence, unless it be accompanied with such circumstances as, in construction of law, would have amounted to the crime of murder if death had ensued ; and it therefore follows that no shooting in a transport of passion, excited by such a degree of provocation, as would have reduced the homicide, if it had ensued, to the offence of manslaughter, can be brought within the Statute on which I am arraigned. In the present case, there can be no manslaughter ; for to constitute that offence there must be an actual death, and no malice aforethought ; but if I had killed Mr. Goldney, most undoubtedly the offence would not have exceeded manslaughter, and in all probability would not have amounted to any thing so serious. For if a transport of

passion, in the meaning of the law, is not to be caused by seeing a man attempting to shoot you, without any adequate provocation on your part; what *can* be taken to be a sufficient excitement? But as I am charged with an intent to *murder*, you will be bound to free me by a complete acquittal, if you consider that it would not have been *more* than manslaughter had Mr. Goldney been killed; for the intent to *murder* is all you have to find upon.

It is laid down in the definition which the Judge Advocate gave you, that there must be *malice aforethought* to constitute the crime of murder; and that malice is said by Blackstone, and others; to be express when it is deducible from "a lying in wait," antecedent menaces," "former grudges, & concerted schemes" on the part of the murderer to do the deceased some bodily harm. Where was my lying in wait, though the Judge Advocate put so strangely a forced construction on the term, as to make my going openly to Mr. Goldney's house in the day time, and allowing his servants to tell him I had come (for was I to anticipate that one who was an Interpreter, could mistake my name for the Doctor's, admitting that he really did so?) an illustration of lying in wait? Where has there been shown even one antecedent threat of mine against Mr. Goldney or any other individual? There are some instances of malevolent language of his in regard to me, but not one of mine in reference to him; though the Prosecutor blushed not, and shuddered not, to promise you that he would prove I had vowed the ruin of some Officer or other. I say he shuddered not to promise a proof that he knew would help to hang me; though at the moment of his cruel threat he must, or should, have known that he was speaking falsely, for that no such proof as he promised you was capable of having been brought. Where was the former grudge that is mentioned? Former disputes there were; but my having done what I could to make them up, is sufficient proof that I bore no *grudge* about them. Let the grudge rest with him who shook hands deceitfully, and told me he was satisfied; but not with me who was honest in the reconciliation. Mr. Goldney could not instance a single act of mine that denoted hostility to himself and is the Judge Advocate to go, with impunity, beyond what his principal witness dare swear to bear him through with? And lastly, where is the concerted scheme to do a bodily injury? A concerted scheme!—Why, I suppose there is no part of India, certainly no part of Oude, where a few hundred rupees would not hire an assassin who would save you the trouble of much concert, the risk of discovery, the fear of punishment, and yet amply satiate your utmost vengeance; and could not I, who have been so benevolently described as having had a Barditti at my beck, have procured one determined hand to have struck the blow that my malice longed for? It is laid down, by Blackstone, that the right of natural defence, does not imply a right of attacking one another for injuries past or impending; as, instead of doing that, men need only have recourse to the ordinary tribunals of justice. They cannot therefore exercise this right of preventive defence, but in sudden and violent cases; and when it can be made to appear that they had no other probable means of escaping their assailant. Now, all this doctrine goes manifestly to convict Mr. Goldney and to exonerate me; for he could not say that, when he retired to his room, and drew out his pistol, and threatened me as he held it, there was any impending danger to his person, or any act of mine had made the impendingness apparent. Neither can he swear that certain and immediate suffering would

have been the consequence of his having, refrained from taking up a deadly weapon ; and lastly he did not retreat, as far as he might have retreated, even had I been violently assailing him ; for he could have quitted his Zenana by a back way altogether, and gone over to the Major's, as he did, after all. "The party assailed must flee," says Justice Blackstone, "as far as he conveniently can, either by reason of some wall, ditch, or other impediment ; or as far as the fierceness of the assault will permit him ; for it may be so fierce as not to allow him to yield a step without manifest danger of his life, or enormous bodily harm ; and then in his defence he may kill his assailant instantly." Now I retreated to a wall ; in the face of a fierce assault, which rendered it imprudent for me to have retreated even a step ; and that assault was Mr Goldney's following me with a threat on his tongue and in his hand a loaded pistol, which he at least was *cocking* ; and all this is taken from his own admission on oath, while my declaration makes it much more critical

If Mr Goldney's pistol had gone off, and the ball killed me, the deed would have been murder, (and he has committed a felony of a capital nature as it is, on that plain doctrine) for he went into another room, and returned with a pistol, and an intent to use it ; and this without having received any provocation, whatever of a nature which the law would accept as all-viatory ; for my refusal to leave his house was all he had to bear, unless the Court determine to believe that I entered his Zenana (and even that would have been no extenuation for him) in the face of the better testimony of his Khudmutgar and Bearer. I some time since, on the first meeting I could procure with a Magistrate, made an Affidavit of these and other circumstances connected with the 9th August, and transmitted it to the Commander-in-Chief through Sir Samford Whittingham.

His Lordship's reply purported that as this Court Martial would investigate the whole, and as I would of course adduce Mr. Goldney's conduct on my defence, His Excellency would postpone any other measures till your decision should be known to him ; and I therefore now again, on the strength of Lieutenant Goldney's own admissions, accuse that Officer of having feloniously and maliciously attempted to murder me. There is another legal doctrine, which, like the rest upon the subject, goes to my full acquittal ; for in reference to all the labor of the Prosecutor to show that I fired at Mr. Goldney with intent to murder him, in consequence of a malice that had long been pre-conceived ; it is clearly established that I fired at him in consequence of his having attempted to discharge his ball at me ; and it is plainly laid down that where fresh provocation intervenes between the pre-conceived malice and the death, it will not be presumed that the killing was upon the antecedent malice ; and that if A. and B. quarrel, and are reconciled, and afterwards fall out again, and A. kill B. it will not be presumed that the parties fought upon the old grudge. But (mark this Gentlemen) if proof be given that the reconciliation was but *counterfeit*, and that the Prisoner (in this case the *counterfeiting* party is intended) was actuated by the previously conceived malice, it will be murder. To whom I ask of you does this clause apply ; ---to me, or Mr. Goldney ? Gentlemen, I shall not trouble you with any further law, for indeed I am but poorly qualified to plead my cause, professionally, but content myself with once more directing your attention to the matter of the indictment. I must be found guilty of either an intent to murder, and nothing

more, nor less, or I must be acquitted; and I have shown you that even a guilty man could not be convicted on all that has been proved in evidence against me; still less can an innocent man apprehend condemnation upon a bad indictment supported by worse testimony. In so slovenly a manner, indeed, has the prosecution been conducted, for all its animosity, that there is actually no conclusive legal proof that my pistols were loaded at all; nor have the weapons themselves been produced before you. The first of these assertions may excite your incredulity and wonderment, because you have probably taken the fact for granted, in consequence of its not having been formally denied. It is, nevertheless true, however, that you have no legal proof that my pistols were dangerously loaded, and I shall convince you of this, in a very few sentences. Mr. Goldney was not asked any thing about it, and all he said was that he heard something strike which he conceived to be a ball. He points to a place in the wall where he says a ball entered, but he neither says that he *saw* the ball there, nor saw it taken out; and as to the bullet which is stated to have broken down the venetian; it could not have, by his averment, entered there at all; and I cannot but say that it is a most extraordinary circumstance that no ball was picked up in that direction. By the way the venetian appears to have been struck, the ball could not have entirely perforated it (and from some paint on the inside of the hole, it would seem very doubtful whether it was made by a bullet or not) for it is evidently splintered off, and therefore the ball could not have had the power of going very far beyond it, and as the area was a private one it could scarcely have gone beyond all discovery. At all events there is no one who swears he *saw* the blind falling down, or struck; there are several who suppose it to have been broken by the ball, but none of them speak from more than after knowledge, because not one of them was so placed as to have enabled him to have seen it. The ball that was shown in Court was picked out of the wall, some time after the transaction, by Lieut. Salter; but he, of course, cannot tell who fired it, nor are you convinced that it could have originally gone *into* my pistol, for you had no opportunity of comparing it with the bore. If the servant's account were true (not that *he* says he *saw* it enter) the ball that he alludes to must have entered very obliquely into, or rather ploughed, the wall, without remaining in it, as a reference to the line of fire t, t, t. from the position G. in Plan No. 1, will fully demonstrate, but could never have been the one which Mr. Salter extracted from a position and direction which convinced him that whoever fired it must have stood nearly opposite to the mark of entrance; so that in point of real fact there is no legally conclusive proof in the whole of the prosecution, that I fired a *loaded* pistol, and, if possible, still less that I fired *two* loaded pistols, as is averred in the indictment; and it may be as fairly supposed that Mr. Goldney broke his own venetian, on aiming perhaps to pass his ball through one of its intervals, when he had discharged his pistol but a few days before, as that I broke it on the 9th of August. I speak, Gentlemen, of regular legal proof;---such proof as alone the law would hang an accused man upon;---and had my case been so desperate as to have left my fate depending on that single doubt, I am fully persuaded you could not have condemned me.

I return my humble, but fervent, thanks to the Almighty that, however, it is not so. That my innocence of this intended murder has been made so manifest, that I have been tried before honorable and most upright Judges; that my long sufferings, under every species of diabolic calumny, scattered widely around, and from various sources, till collected into a focus in the Prosecutor's address, are at length drawing near to an end, and my fame to a vindication; and while I most humbly and heartily thank Him for all those mercies, I look forward, with a full but not an arrogating confidence that it will please Him to send me, through you, Mr. President and Gentlemen of this honorable Court (whom, next to him, I thank for the indulgence you have shown me throughout this painful trial) a full, a speedy, and a safe deliverance.

Lieutenant W. D. Torckler's Affidavit.

William Young Torckler, a Lieutenant in the Military Service of the East India Company, on their Bengal Establishment, and at present residing at the Station of Cawnpore, maketh oath, and saith: That on the morning of the 9th day of August, in the Year of our Lord, One thousand Eight hundred and Twenty nine, at the Military Station of Sultanpore, in the Kingdom of Oude, between the hours of eight and nine in the morning, he was in the house of Lieutenant Philip Goldney of the 4th Regiment, Bengal Native Infantry, and that the said Philip Goldney did then and there retire to a room, which the deponent verily believes to have been his bed-room, and did return from it, or as far as the door of it, with a pistol in his hand, which this deponent firmly believed at the time, and has since more particularly ascertained, and now verily believes, to have been loaded with a bullet: and did then and there, and without any warning present it at this deponent, and did pull, or draw the trigger of it, with the unlawful and malicious intent, as this deponent doth verily believe, of feloniously, and with malice aforethought, taking the life of this deponent, or maiming this deponent or doing this deponent some other greivous bodily injury; and this deponent, distinctly declares upon his oath, that upon the said Philip Goldney having pulled, or drawn, the said trigger as aforesaid, he, that is to say this deponent, did plainly see sparks of fire issuing from the lock of the said pistol, which sparks were caused by the collision of the flint and steel of the said pistol, in consequence of the above described unlawful and malicious attempt to discharge it. And this deponent further maketh oath and saith: That the said Philip Goldney did, upon his pistol having missed fire, again cock the said pistol, and did again pull, or draw its trigger, with a like unlawful and malicious intent of discharging it - contents at this deponent, in order feloniously and with malice aforethought, to take away the life of this deponent, or to maim this deponent, or to do this deponent some other greivous bodily injury; and he, the said Philip Goldney, did a third time, and in the manner, and with the unlawful, malicious, and felonious intent hereinbefore described, endeavor to discharge the said pistol at this deponent as this deponent doth hereby solemnly make oath, and declare. And the deponent further maketh oath and saith: that at the period of the first felonious, and malicious attempt, as hereinbefore deposed to, and described, he, the deponent, had not used any violence whatsoever to the said Philip Goldney, nor threatened

with any violence, the said Philip Goldney, nor had the intention of using any violence to the said Philip Goldney, excepting such as this deponent should here deemed, and taken to have been in self-defence ; and the deponent further maketh oath and saith : that at the period last mentioned, the said Philip Goldney did not, to the best of this deponent's knowledge and belief, know, and could not, from any word or action of this deponent's, have known, that this deponent was armed, or in any manner capacitated for defending himself against the said felonious and malicious attempt upon his life, save and excepting by such manual or bodily means as nature had given this deponent.

And this deponent further maketh oath and saith : that in less than two hours after the above described transactions, he, this deponent, was put into close imprisonment and under fixed bayonets, by the orders of Major John Holbrow, then Commanding at the said station of Sultanpore, in the said Kingdom of Oude, on what this deponent doth verily and firmly believe to have been the false oath of the said Philip Goldney and the false assertion of two, or more, servants of the said Philip Goldney : which oath was, as this deponent verily believes, administered to the said Philip Goldney, by the said Major John Holbrow, acting as this deponent was informed by Lieutenant George Salter, the Station Staff, of the said station of Sultanpore, and doth verily believe, in the character of a self-constituted Magistrate, and therefore not lawfully empowered, as this deponent believes, to administer an oath, or take such deposition.

And the deponent further maketh oath, and saith : that he, this deponent, was not allowed, nor given the option, to be present during the said examinations ; nor called upon for any statement of his case, nor furnished with any copy, or abstract of the said examinations ; nor allowed to hear read over the said examinations ; nor furnished with any copy of the commitment, nor in any manner made acquainted with the matter of the accusation, at the time of his imprisonment, nor until one calendar month, at the least, after it ; although the said Major Holbrow, as this deponent verily believes, avowedly considered it a civil case and acted as a Magistrate in receiving the depositions aforesaid, and was acquainted with this deponent's desire to be furnished with a copy of the above named examinations, and the consequent indictment.

And the deponent further maketh oath, and saith : that he was placed and kept in close imprisonment as aforesaid, without having had any opportunity of duly deposing to the above facts, and circumstances, until his arrival at the aforesaid Station of Cawnpore, which did not take place till about seven weeks from the time of the imprisonment of this deponent, and that during all that period, and up to the present time, this deponent suffered, and continues to suffer, close imprisonment in his house, upon a false accusation, made upon an oath illegally administered, as this deponent doth verily believe, and not in the presence of this deponent ; which false accusation was made by the aforesaid Philip Goldney, the same person who attempted the life of this deponent in the manner aforesaid, and the person, who is, in truth, guilty of the felony thus falsely imputed to, and charged against, this deponent.

*Sworn before me
at Cawnpore, this 6th day
of October, 1829.*

*J. A. IRWIN,
Magistrate,*

*W. Y. TORCKLER, Lieut.
4th Regiment Native Infantry,
Bengal Establishment.*

THE REPLY, OR SUMMING UP;

Of the Deputy Judge Advocate General, as actually delivered in Court, together with Notes of the various alterations made out of Court as observable in the Transcript of it which was forwarded to Head-Quarters with the Proceedings, when compared with an Original Copy of the Actual address.

Mr. President and Gentlemen, Members of this Court Martial.

The tempers and dispositions of mankind, being almost as various as their numbers, I cannot flatter myself that my Reply to the Defence you have just heard, will be satisfactory to all of the Honorable Members of this Court Martial^a or all of those in whose presence I address you, nevertheless I entertain a *confident*^b hope and belief^c that, on the whole, my conduct this day will deserve (and if it deserve, I am sure it will meet with) the approbation of *this* Tribunal, and those before whom this Trial will eventually be laid.

For a few minutes, Gentlemen, and but for a very few, I must not address you *merely* as a Judge Advocate *and the humble though honest Counsel for the Crown*^d I am compelled in the first place to address you in the Character of an Officer, and a Gentleman, and this compulsion arises out of the Defence, and has not been sought for by me.—What is that defence I would ask, but an uninterrupted and uniform tirade and vilification of me, in the several situations which I hold in life—as a Man—a Christian—a Gentleman—a Man of Honor—an Officer—and a Judge Advocate—and lastly, but not least in importance, as one who is known to have made the Law of England the object of his fond solicitude, and the subject of his deepest study for several years.

Now I would ask, whether I have not in every Page of this long defence, been accused of displaying “uncalled for virulence” and “deliberate misrepresentation” and this too by Name?—for look to pages 13* and 31, and you will see me alluded to, not only as the Public Prosecutor, the Counsel for the Crown, but in the following words “as an Officer, a Judge Advocate, and a Man of Honor, and Humanity;” and in page 14† by way of proving me to be so, or the contrary, it is affirmed, that I have made “reckless and inhuman” and (as the Prisoner says he is now entitled to say) “false assertions;” an observation repeated in Page 115‡ and in some other place still I am accused of “express” falsehood.”

One would imagine it had been intended to prove the truth of Mr. Addison’s assertion that “scurrility (two often) passes for wit.

* This word omitted in the transcript sent to Head-Quarters.

† After *confident*, read “and I trust it will prove a well founded” introduced in Do. Do. Do.

‡ These words omitted.

§ Instead of these words in Italics, substituted by the D. J. A. G. the following “and Public Prosecutor in behalf of the Crown.”

• For “express” the word “wilful,” substituted in the transcript sent to Head-Quarters.

Pages 135,
and 138.

+ Page 128.

‡ Page 133,
and 145.

and he who can call names in the greatest variety of phrases is looked upon to have the shrewdest pen." (Spectator 451) He had been just saying most unfortunately for the Prisoner (for I am at liberty to conclude he instructed his friend as clients generally do those who defend them)—he had been just saying that libels and lampoons were themselves the works of an evil mind, and were highly criminal in themselves; and that under the Romans (on the authority of Cicero) the crime of taking away the good name of another was considered so wicked and ungenerous as to be one, among the few, very few, offences punishable with *Death*.

Gentlemen, you are told that I have been searching the *Dictionary*[†] for "desperate terms," that I have displayed "studied acrimony" that I have loaded the Prisoner with "a mass of obloquy"—that I have heaped upon him "an accumulation of slander"—that to prove the vindictive measures I have "premeditatedly spirted forth" disgraceful allegations, unproved invectives, and malign misrepresentations.

Gentlemen, you are told that I have concealed from you the true Rules and Law of England applicable to this case;—that I read passages from my books favourable to the Prosecution, and finished them when I discovered any thing advantageous to the Prisoner*; you are informed that I hinted to and prompted my witnesses to give evidence in words to which they would not swear, that I inserted an expression in an answer which had not been uttered and *which the Prisoner interposed and had erased*[‡];—in short that a *hired railer* could not have exceeded me in my expressions of malignity, nor the most injured individual given his language greater virulence than I did.

It would be difficult indeed to say what I have *not* been charged with, disgraceful and unbecoming the character of a Christian—a man of Honor---feeling and Humanity---an *Officer*[§]---a Lawyer---and one holding the high, responsible. (and spite of the detraction of the defence I shall shew it)[¶] "the impartial" situation of Judge Advocate in whose hands to a certain *degree is*^{||} placed, the Life, the Honor, and the happiness of those he Prosecutes.

To sum up all this unmerited slander and defamation you are told that, and that deliberately, and on reflection of several days,* that I have been an intolerant, heartless, and unrelenting, Prosecutor; that I have *corruptly*[†] prostituted the dignity, and betrayed the sanctity of my Office,---that I thought your hearts were as callous as my own,

• Vide Page 75 & the marginal note at Page 77 in proof of this.
W. Y. T.

• verbatim as in the original address.

† The word "*Vocabulary*" substituted in the transcript.

Altered thus—"which obliged the Prisoner to interpose and have erased."

"An Officer" omitted in the transcript."

"I will still prove it." substituted for "I shall shew it."

Corrected thus—"extent are."

The following introduced—"That was the word."

and that in the wantonness of my cruelty, my *legal cruelty*, I have purposely distorted the Law of England, and Laws of Evidence, with the Bloodthirsty and inhuman intention of inducing you, by your confidence in me, both as an Officer and a Lawyer to *immolate and sacrifice*, on an ignominious Gallows this *my and your*¹ Brother Officer, on the faith of my misrepresented, distorted, and unfounded Law !

These are hard and serious Charges, but, Gentlemen, what is the reply that should be made to these defamatory invectives, this foul mouthed ribaldry, this censorious abuse ?---I have but one.---Shall I pass them by and treat them as the idle wind which I regard not ? *No !* for in that case it might be supposed that I flinched from, and was afraid of them !---Shall I attempt to refute them ? *No !* for the thought that they would *bear refutation* would be implying that there is some even shadow of, or resemblance to, truth in their composition. Shall I treat them with scorn, contempt, levity, or indifference, or betake myself to the use of acrimonious recrimination ? *No !* I will do neither the one nor the other ; for I should by so doing, level myself with, or more properly speaking lower myself lower (*if that be possible*) than are the calumnies and invectives here heaped upon me.

This Court full well knows that my Temper and Patience are not easily ruffled, and I would not by acting as above stated lose sight of my respect for this Court.

I said I had one answer to give to all these charges ;---before I give it, let me by the way observe, that had they emanated from the *Prisoner himself*, I would have reminded him *quietly as a friend*, that he would best consult the tranquility of his own life, by not provoking the moderation of my temper---and if that warning had not proved effectual, I would have openly proved to him, that if, from the profoundest contempt for slander of the truth^m of which my own conscience neither accused nor upbraided me, I did ever rise into anger, he should soon have found that all I have said of him has been *lenity and compassion*. Unless when necessary, harsh feelings and sentiments are strangers to my heart, and when excited, *too painful* to remain longer an inmate of it, then for the moment in which they were engendered : their birth and their extinction follow with the rapidity of Thunder and Lightning.

My answer then to all these vilifications is this ; that, as they do not in all probability proceed from the Prisoner's own breast ; he cannot be justly responsible for them, and you *must* not therefore, Gentlemen, allow yourselves to be prejudiced by them. In the Christian Spirit of Forbearance and Charity, I adjure you by every situation which I hold in private or public life, not to lay this additional sin to his charge.---As for the allegations themselves, I despise and condemn them---and instead of hurling them back with con-

¹ Corrected to "*your and my*."

² The words "*and applicability*" appear to have been introduced here in the T manuscript.

tumely and reproach to the source whence they proceed, I shall pocket them, as I believe, Mr. Mathew Hale did the libels on him, and in conscious integrity write on them, as he did, "These are libels, may God forgive their authors as readily as I do."

I need not ask the Prisoner to listen attentively to what I am going to submit to your consideration, but *I will* ask him to detect if *he* can a passage in the following observations which displays any tinge of resentment to him, or leaves a trace of even displeasure, much more, *one shade* of anger, for his tacitly foul and oprobrious aspersions of me---the time has gone by---the instrument of revenge *was* in my hand, but has now been deprived of its force --- The Prisoner has every claim to compassion that can arise from misery and distress, whether he be innocent, or guilty; the bare fact of his being under trial for such an offence would disarm even a private enemy though he possessed the feelings of a fiend---but *I* have stilled all resentment and I freely forgive him for his detraction----Yes, Gentlemen, harsh and grating to my feelings as are the allegations he has urged against me to you, and is going to do to the World (which but for *this*^o would pronounce me *not a man* but a *monster such as the World* never saw, and would hand me down to posterity "*dammned to eternal fame*" and second only to, if not more infamous in deeds of horror than *Charles*^o the 2nd's infamous Jeffries, and as corrupt and virulent as Coke and Bacon, (names and characters well known to this Court) notwithstanding all this I freely, fully, and conscientiously forgive him.

My conscience has not yet twinged me for *ought* that I have done---and I trust it never will---I might have appealed to the Court for protection from slander and defamation (incidental at all times to the honest and upright discharge of one's duty, and in general proportioned to the ability with which it is executed) but conscious integrity, and composure, and tranquility of my own mind, told me I did not require a shield. ---My conduct is before the Court,---and will be before the world, and each individual, who chooses, may then judge for himself, how far I have merited or deserved the reproachful language of this Defence---I quit the subject never to return to it, by expressing my astonishment and lamentation that one, who has received so much assistance from me, in various ways, during this trial (and heretofore in the shape of *advice*--advice which he followed and which obtained that which he wanted, advice, too, connected with circumstances which had I been the base creature he describes me, I had made to tell most fearfully against him) I say, I express my astonishment, and honest indignation, that the Prisoner should have allowed these Charges to be made:--I lament that ingrati-

* Altered in the transcript to "*has been often*."

o "*Explanation*" introduced after "*this*."

o Corrected in the Transcript "*Jamez*."

tude so black should find a home in the heart of man. I now lay a side, to a certain extent, my situation of Public Prosecutor, and as your legal and impartial adviser, purpose with your permission to submit to your consideration some observations on the Charge before you, on the Law applicable thereto, on the testimony which has been adduced in its support, and on that which has been urged by the Prisoner in his Defence. As to the jurisdiction of the Court, it would not be, I conceive, altogether respectful to the Court, for me to argue the question of its jurisdiction after the Court has decided upon it, and the only observation therefore that I shall make is, that the assertion that a General Court Martial is not a Court of Record, and is not included in the expression in the Statute "any of H. M.'s Courts of Justice, erected or to be erected" must be either a mistake of a writer's or an egregious legal error on my part or some other persons, especially as G. C. M. are mentioned in the two concluding Sections of the 9th Geo. IV. c. 74. the Statute you are now trying on. It is not my intention to lengthen these Proceedings, by replying minutely to the various objections and pleas offered by the Prisoner in abatement to the Indictment---I call it so, as it is nothing more nor less than an Indictment, which in the language of Lord Hale "is a plain, brief, and certain narrative of an offence committed by any person, and of those necessary circumstances that concur to ascertain the fact and its nature"---2. Hale 169--1 Chitty, Crim. Law 168---Now, if we look at this Indictment, it will be found that it charges the Prisoner with having, on a particular day, at a place specified, fired a loaded pistol or two loaded pistols, with the unlawful, felonious, and malicious, intent to murder a particular person.---Had this Prisoner been tried before a Civil Court, I will acknowledge that the Indictment against him would have been worded in a more technical manner than it now is, but I will deny that it could have been made more intelligible to the human understanding, or more definite, precise, and *certain* in point of legal strictness than it at present stands.

There may, however, be among those whom I have the honor to address, and in whose hands, the life of the Prisoner is, in a great measure, placed, some one, or perhaps more, of opinion that the Prisoner has been, or may be, exposed to considerable danger, and unprecedented hardship, by the supposed omissions and irregularities of which the Prisoner (through his friend) has complained, with respect to this framing of the Charge.

That individual, if there be one, may be *inclined humanely* to shrink from the exercise of his duty to society, on the belief that the Prisoner has not had the benefit of those advantages which he would have enjoyed had he been tried by a Court of Law, (in the popular sense of that term) and been assisted by those who have made the Law the object of their study and research. It may not, therefore, be improper, if I proceed to point out from authors of undoubted celebrity,

what the general requisites of an Indictment are, and any doubts as to the certainty and sufficiency of this charge will then vanish & dissipate like darkness at the rising of the Sun. The first general rule respecting Indictments is that they should be framed with sufficient certainty--- "For this purpose the Charge must contain a certain description of the Crime of which the Defendant is accused, and the statement of the facts by which it is constituted, so as to identify the accusation, lest the Grand Jury should find a Bill for one offence, and the Defendant be put on his Trial for another, without any authority (1 Chitty C. L. 169 and authorities there cited.) On which point it seems only necessary to say that as the finding of any Bill of Indictment, by any Grand Jury, or other Tribunal, before a General Court Martial sits to decide it, is not required, so much of this general requisite is not applicable to this case.

Again--- "These precautions are also necessary in order that the Defendant may know what Crime he is called upon to answer, and may be enabled to claim any right or indulgence incident to the Prosecution of some Crimes, as Treasons &c. (in which by special Law, he is entitled to a Copy of his Indictment ten days before trial---a complete list of Witnesses for the Prosecution with their place of residence, &c. and other advantages unnecessary here to be detailed); these precautions, are also important in order that the Defendant's conviction or acquittal may insure his subsequent protection should he again be questioned on the same ground, and that he may be enabled to plead his previous conviction, or acquittal of the same offence, in bar of any subsequent proceedings." *Ibid.*

Now, Gentlemen, if the Prisoner and this Court do not know what Crime he is called upon to answer---if a definite offence is not on record---if his conviction or acquittal of this offence, by this competent Tribunal, would not be a complete and sufficient bar to any Proceedings against him, on the same grounds, in any Court whatever,---then I will acknowledge this Indictment to be uncertain in point of law, and null and void in point of reason. But, if the substance and gist, of his crime be plainly to be gathered from the Charge, as it stands, then it is altogether immaterial, I assert it with confidence, whether his Christian name be omitted altogether or written at full length; for the Prisoner must know that the plea of misnomer could not have availed him any thing---it is immaterial whether the date be in figures, or in words, for *time* and *place*, and *figures* are not in this case essential, nor need they be proved exactly as laid,---particularly with respect to figures, which will be found in great abundance in the 9th Geo. IV. c. 74, the Statute before the Court, in its preamble, in the 74. 75. and 76. Sections, and in the two last ones.

After mentioning the preciseness with which Indictments should be framed, Mr. Chitty says (vol. 1. Page 200) "But though such great strictness is in general necessary in the averment of a Parish, Vill, or

Place, it is somewhat singular that it is, in *no case*, not even in the instances of Treason and Murder, necessary to prove that the offence was committed at the precise Vill, Parish, or Place, mentioned in the Indictment"—and again (same vol. 224) "though the allegation of a specific time is then important, it is in *no case*, necessary to prove the precise day, or even year laid in the Indictment, except where the time enters into the nature of the offence—as for instance in the case of a Burglary which can only be committed when there is not enough of day light, begun or left, either by the light of the sun or twilight, to discern the face of a man (2 East. P. C. 509) : therefore in that case, *time* must be proved *exactly* and averred in the Indictment,---and therefore, an overt act, or acts of high treason may be proved to be committed on a different day from that mentioned in the Indictment." For authorities on these points,---see Chitty, Criminal Law, at the pages above mentioned, and at page 294 and 357 of the same vol: where authors too numerous to quote may be seen---and Phillipps Law of Evidence vol 1. 215 and at 207 of the same work for the opinion that such averments as those are immaterial, and that immaterial averments may be left out altogether, regarded as mere surplussage if inserted, or need not be proved. A considerable portion of your time Gentlemen, was occupied in listening to objections to the omission of the words "wilful, and malice aforethought"—and also to the omission of the averment that the pistols were loaded with ball---or some other specified destructive substance, and you have been referred to numerous authorities for the indispensableness of using the words of the Statute.---In the first place then, the word *wilful* is not in the Section upon which the Prisoner is being tried,—therefore it is not necessary in the Charge ---It is in Lord Ellenborough's Act and therefore was, I allow indispensable in all Indictments under that Act, but it is in this *purposely omitted*. In the next place with respect to the words "with malice aforethought," I acknowledge that I should have put them in any Charge I framed, but I do not, in sincerity, believe them to be indispensably necessary. In the growing disposition to abolish the technicalities of the Law, and to make it comprehensible to almost the obtusest understanding, the Framers of our Statutes and Indictments are by degrees becoming intelligible in their language. It is known full well that I have been too technical, but bowing to Superior Authority not however without agreeing in the *propriety* of the change in my opinion, I am inclined to believe that the reforms of the Law do dispense with much that was abstruse and unseemly, and which tended rather to the increase than the decrease of Crime, by rendering a conviction hard to be procured. This Statute uses the word to "*murder*" by itself, but it does not go on to give a definition of that crime, or the difference between it and other descriptions of Homicide; it concludes that the meaning in a legal point of view of the word "*murder*" will be thoroughly understood by the Tribunal before which a man is tried for the attempt, and that before they convict him, they will satisfy themselves of its le

gal import---and not pronounce acquittal or condemnation, unless they are satisfied according to their conscience and the best of their understanding, what this one word "*murder*" is---and why have these omissions (as they are called) been made?---for the purpose of depriving the Law, and its administration of the unseemly technicalities and frivolities by which they were clogged and embarrassed, and owing to which niceties, men escaped, rather than by the manifestation of their innocence. It was said "the word *loaded* is not *per se* sufficient, either to shew a murderous intent, or a felonious action;"---and again it was said "the manner in which the pistol was loaded, is essential to be described, for if loaded with powder only the discharging it was not felonious, and the *intent* of discharging it could not have been to murder; and on the positive necessity of averring that the pistol was loaded with a leaden bullet or slugs, or something else that is hurtful or dangerous, you were referred to 3. C. C. L. 791. and other authorities.

When a Court is referred to an authority in support of a doctrine which a speaker or writer wishes to impress on its attention, I think the Court may with reason conclude that something shall be found, on making the reference, having analogy, to the speaker's doctrine. I confess I was not a little surprised to hear that the assertion of the *manner* in which the arms were loaded, was in 3. C. C. L. said to be indispensable---because *I knew it was not Law, even if he said so*---but I nevertheless made the reference and I now challenge any person to construe a line in the whole page in a way that will convince the Court that such an untenable opinion is in Mr. Chitty's work---and I further challenge the production of an opinion of a Lawyer, or the decision of any Judge, that the missiles with which arms are loaded, must be averred-----and I will state the reason why the term "*loaded*" is *per se* sufficient.

In the first place---it is the only word used in the Statute---and in the second, if it *had* been alleged that these pistols *had* been loaded with ball---and the ball had not been found, or it were proved that it was not a ball, but a button or a piece of stone, or a marble, or the stopper of a bottle, or in short any thing in this wide world *capable* of destroying a human creature, then this Charge would have been equally supported.

The averment then of the nature of the missile is immaterial, and immaterial averments need not be inserted in an Indictment, and if used need not be proved as laid. I said in the commencement of these remarks that I laid aside my situation of Public Prosecutor, and the opinion I have just delivered is one on which I humbly ask the Court to rely with confidence. As the opinions of the Advocate General of Calcutta, and 4 other Barristers, have been obtained on other points, probably some have on this. If they contradict what I have, or shall say, let them be produced to contradict me.

In confirmation of my opinion I refer the Court to the case I formerly quoted, 1. Burns Justice, 293. Rex versus Wm. Kitchen--- where the indictment uses the simple words "loaded pistol" without any specification of the nature of its destructive contents; and to the case of Rex versus Atkinson, York Lent Ass. 1806 (in 1 Burns Justice, 295) where one of the Counts against him for cutting and stabbing, did not even mention the instrument, because the indictment was supported by proof of any instrument capable of cutting having a sharp edge---I could carry on this argument to an interminable length, but the conclusion of the Court would not be stronger than I am confident it now is, of the legal sufficiency of the Charge, and the non-existence of any necessity for a more certain definition of the Crime. In fact Mr. President and Gentlemen, the observation of Lord Hale with respect to these niceties is strictly applicable to all the objections that have been urged in abatement of the Charge, to the Jurisdiction of the Court, and the proof of the pistols being loaded with Ball. He said, that the strictness required in Indictments was grown to be a blemish and inconvenience in the Law, and in the administration thereof; that more offenders escape by the over-cautiousness given to exceptions to Indictments than by the manifestation of their innocence, and that the grossest Crimes had gone unpunished by reason of these unseemly niceties---an opinion since confirmed by Lord Kenyon (1 East. 314) Lord Ellenborough (5 East. 260) and Lord Mansfield, who declared his opinion that it was almost as bad to let a crime go unpunished as to permit an innocent man to suffer (1. Leach 383).

I have to apologize for this trespassing on your time, but as you have been told that this Charge is radically defective---that it is one of the worst charges ever framed---that it is in point of Law of no more weight than so much blank paper---that it is in fact a Charge upon which the spirit of your Oath forbids you to convict---I have deemed it proper to attempt to remove the impression which such declarations were well calculated to make---particularly as I was personally called upon to declare to you my own unbiased and candid professional opinion on the legal sufficiency of this Charge. I have done so, and had the objections come from any other quarter than they did, my address would by this time have been concluded, and I should have been spared the censure to which I am obnoxious for this occupation of your time and this apparent display of Law.

With your kind permission I will now proceed to consider the evidence which has been adduced in substantiation of this Charge, and in so doing shall confine myself strictly to the occurrence of the 9th August---and at the same time consider the Law applicable to each little particular.

I deem it altogether unnecessary to advert to the transactions of May, 1829, or indeed any previous to the 9th August, ---the patient and vigilant attention which has been bestowed on the evidence,

has probably induced most of whom I have the honor to address, to form their opinion of the terms in which Mr. Goldney and the Prisoner were, up to that time---and by what motives Mr. Torckler was actuated when he went to Mr. Goldney's house.

The object and drift of the cross-examination, and of parts of the written evidence given in by the Prisoner, appear to have been, the establishment of malice on Mr. Goldney's part towards Mr. Torckler, and that he and not the Prisoner commenced the transaction under investigation. The question at issue then will be, and it is a point of Law founded on facts as they occurred, was Mr. Torckler's conduct on that morning the dictate of his own malicious disposition, and wicked mind, or the involuntary impulse of the moment in self-defence and preservation of his life? If it were the former, Guilty is the Verdict; if it were the latter, I shall rejoice to see it established. As I do not see what other line of Defence could have been attempted, I have only prepared myself on these two points---1st Murder---and 2d Self-preservation, this last being the fourth species of Homicide, i. e. by necessity--the Law on which head I submit the following. 4 Com. 182.

Homicide in *self-defence*, or *se defendendo*, upon a sudden affray, is also excusable rather than justifiable by the English Law. This species of self-defence must be distinguished from that just now mentioned, as calculated to hinder the perpetration of a capital crime, which is not only a matter of excuse but of justification. But the self-defence, which we are now speaking of is that whereby a man may protect himself from an assault or the like, in the course of a sudden brawl or quarrel by killing him who assaults him. And this is what the law expresses by the word *chance medley*, or, as some rather choose to write it, *chaud medley* the former of which in its etymology signifies a *casual* affray--the latter an affray in the heat of blood or passion; both of them of pretty much the same import, but the former is in common speech too often erroneously applied to any manner of homicide by misadventure; whereas it appears by the Statute 24. How. 8 C. 5. and our ancient books that it is properly applied to such killing as happens in self-defence upon a sudden rencounter. This right of natural defence does not imply a right of attacking; for, instead of attacking one another for injuries past or impending, men need only have recourse to the proper tribunal of Justice.

They cannot therefore legally exercise this right of preventive defence but in sudden and violent cases when certain and immediate suffering would be the consequence of waiting for the assistance of the Law. Wherefore to excuse homicide by the plea of self-defence, it must appear that the slayer had no other possible (or, at least, probable) means of escaping from his assailant.

* * Mr. applied to Lieutenants Torckler and Goldney throughout this Address, altered to "Lieutenant" in the transcript sent to Head-Quarters.

The Law requires, that the person, who kills another in his own defence should have retreated as far as he *conveniently or safely can*, to avoid the violence of the assault, before he turns upon his assailant; *and that not factitiously, or in order to watch his opportunity*, but from a real tenderness of shedding his Brother's blood.

And as the *manner* of the defence, so also is the *time* to be considered, for if the party assaulted does not fall upon the aggressor till the affray is over, *or when he is running away, remember this* Gentlemen, this is *revenge*, and not defence. Neither under the colour of self defence, will the Law permit a man to screen himself from the guilt of deliberate murder; for if two persons, A. and B. agree to fight a duel (the very consent to fight which implies malice in both parties, in the eye of the Law---how much more so, when there is no agreement) and A. gives the first onset, and B. retreats as far as he safely can, and then kills A. this is murder because of the previous malice, and concerted design to do an unlawful act, and mischief to one another with weapons, the almost necessary consequence of using which was the death of one of them.

Thus much, Gentlemen, at present respecting the Law of self-defence the killing another under which circumstance, must be an *inevitable necessity*, and that the slayer *had no other means* of preserving his own life than by killing his assailant.

To proceed now to the evidence of Lieutenant Goldney, and the two servants who have been examined in corroboration of his statement. The Court, I presume, will, as hitherto, have the whole of its Proceedings deliberately read over, and I shall not therefore read any long parts of the evidence at this stage of the Proceedings.

The very few observations therefore which I am going to submit on the evidence I will here make, and in the first place I would ask what could be Mr. Torckler's *intent* in going to Mr. Goldney's house in the way he did? With a pacific intent or the unlawful one of bullying him into signing a paper, or of fighting him instantly without seconds, and without witnesses if he would not? If this view of the case is adopted by the Court, the Prisoner in point of Law is answerable for all the consequences---because his original design was unlawful. It was attempted to make out that Mr. Goldney assaulted the Prisoner---but I shall not stand upon that---whether he did so or no is to me very immaterial.

Mr. Goldney found the Prisoner in his bed room---I mean the bow room where *his own* bed was placed. Now, let the Court determine the light in which the conduct of a man must be viewed, who, after an alienation of two or three years, and not being on terms with another man goes at eight in the morning into the bed room of that man (look to the plan and say is it the reception room for visitors?) and be-

* These words "*Remember this Gentlemen*" omitted in the Copy sent to Head-Quarters with the Proceedings.

ing ordered to leave the house still persists in remaining there, say is this conduct hostile or peaceable. Lient. Goldney tried to get him out of his house---and as he himself swears, he thinks he laid his hand upon his back to conduct him out of the house, and his servants have deposed that their master refused to take the note, and in a hurried manner repeated his order to turn Mr. Torckler out. I have anticipated that great stress would be laid on this fact, as affording proof that Mr. Goldney commenced the first assault and therefore that the Prisoner was justified in defending himself from it and firing two shots at him *after such* defence. But Gentlemen here again reminding you that I am not now urging the case any more *against* than for Lt. Torckler I am bound to submit to you that Mr. Goldney was fully justified even if *he did* commit the assault here attempted to be established. There are cases in which an assault and battery may be justified, and among them is this "likewise if a person comes into my house, and will not go out, I may justify laying hold of him and turning him out" the passage seems written for this occasion; it is in 1 Burns Justice 183--- What was Mr. Goldney's observation "Leave my house, Sir, I can have nothing to say to you"---repeated more than once. This shewed that Mr. Goldney sought no quarrel, wanted no dispute, and was justified in calling for the assistance of his servants---who were also justified, whether desired or otherwise, to defend their master. A Wife may justify an assault in defence of her husband---so also a servant in defence of his Master. 1 Burns Justice, 182. and authorities there cited. So also the following from the same page, "if A, enters into the ground of B, unlawfully, B must request him to depart before he can lay hands on him to turn him out, for every impositio manuum is an assault and battery which cannot be justified upon the account of breaking the close in law without a request---But if the entry be *forcible as by breaking down a gate, or the like* a request to depart is unnecessary,--for acts of violence on the part of the trespasser may be instantly opposed by such acts of violence on the part of the owner, as may be necessary for the immediate defence of his possession," and then comes the part before cited, "Likewise if a man comes into my house, and will not go out I may justify laying hold of him and turning him out" thus acknowledging that under the head of the words "or the like" a man going forcibly into a house, or remaining in it after he has got in against the will of its owner, is one of those acts of violence which may be instantly opposed by acts of violence without even a previous request. With one more passage on the Law of

...trespass, a party should not either in defence of his person, or his real or personal property, begin by striking the trespasser, but should request him to depart or desist, and if that is refused, should gently lay his hands upon him in

The word "*such*" altered to "*self*" in the transcript sent to Head-Quarters.

W. Y. T.

the first instance, and not proceed with greater force than is made necessary by resistance---thus when a church warden justifies taking off the hat of a person in Church at the time of Divine Service, the plea stated that he first requested the plaintiff to be uncovered and that the plaintiff refused'---Home, versus Plonner, 1. Sanders, 13 1 Russ 1, 86). 1. Burns Justice, 183. It will be for the Court to say whether Mr. Goldney committed any assault or battery upon Mr. Torckler which in Law is to be considered a provocation sufficiently violent to excuse or extenuate an act of violence on Mr. Torckler's part manifestly calculated to endanger Mr. Goldney's life. It has been attempted on the part of the Defence to discredit the testimony, and impeach the veracity of Mr. Goldney by shewing a variance between his statement on oath and that of his own servants witnesses to the transaction now under investigation--and I had little doubt that these variances would be urged to the utmost, as proofs of Mr. Goldney's want of veracity. But, Gentlemen, in what points are these discrepancies to be found?--In any material part of the transaction, or in some non-essential, and trivial circumstances, too slight to be impressed on minds of several spectators in the same manner?

I am aware that Mr. Goldney has sworn that there was a chick---but no cloth on it--and that at first he said he did not know whether it was up or down, and that he subsequently swore he believed it was down. In opposition to this, his Bearer and his Native Girl, under the same solemn obligation of an oath, declare that there is a chick --that there is cloth upon it, and that the chick was *up*.

Again a discrepancy is to be found in the testimony of these three witnesses, as to the leaf of the door behind which Mr. Goldney screened himself from the Prisoner's second fire. Mr. Goldney distinctly told the Court, that it was behind one leaf, and the Bearers have as distinctly affirmed the other, and each described behind the leaf of one of these doors the position of Mr. Goldney, that of himself, the others and how they saw him stand. If these variations be relied upon as affecting the veracity of these witnesses, I look upon, and submit them to the Court, as admirable evidence of the truth of the general statements of the three." A difference between witnesses on points of little importance affords no reason to suspect their veracity." I quote from Phillipps Law of Evidence 1---164. "these variations in testimony occur every day in the transactions of common life, and may be explained on the commonest principles of human nature; men relate facts as they observe and remember them; and the powers of attention, observation, and memory are infinitely diversified. A difference in the manner of relating unimportant circumstances is perfectly natural, and what might be expected in the ordinary course of things; on the contrary, it is the exact coincidence in minute particulars that shows contrivance and excites suspicion. An eminent writer (he continues) in

adverting to differences in the narratives of the sacred Writers has made some very judicious observations on this subject which are of universal application." "If several independent witnesses of fair character" he says--"should agree in all the parts of a story (in testifying for instance, that a Murder or a Robbery was committed at a particular time and in a particular place, and by a certain individual) every Court of Justice in the World would admit the fact, notwithstanding the abstract possibility of the whole being false. Again, if several honest men should agree in saying that they saw the King of France beheaded, though they should disagree as to the figure of the Guillotine, or the size of his Executioner, as to the King's hands being bound or loose, as to his being composed or agitated in ascending the scaffold; yet every Court of Justice in the World would think that such difference respecting the circumstances of the fact, did not invalidate the evidence respecting the fact itself. It would be impossible to establish the truth of any fact, if a disagreement in the evidence of witnesses in minute points, should be considered as invalidating the weight of their evidence in points of importance. In a word the relation of a fact differs essentially from the demonstration of a theorem. If one step is left out, if one link in the chain of ideas constituting a demonstration is omitted, the conclusion will be destroyed; but a fact may be established notwithstanding a disagreement of the witnesses respecting it, in certain trifling particulars of their evidence." So also says Mr. Tytler 298 "If a witness takes upon himself to remember with the greatest minuteness all the circumstances of transactions long since passed, and which are of a frivolous nature and not likely to dwell on the memory, his testimony is therefore rendered very suspicious: as, on the other hand, a witness affirming his total want of recollection of the most material and striking circumstances of a recent and remarkable fact, which happened in his own presence, as deserving of very little credit in those particulars which he pretends to remember." Judging the evidence of these three witnesses, by this rule, the Court will say whether it believes their general statement. I deem it here due to Lieutenant Goldney to say that in my opinion his evidence did him honor, as an Officer and a Gentleman, notwithstanding all the obloquy and calumny, and imputations of perjury which have been thrown upon his character. I can safely declare that he requires no supporter, no vindicator of his untarnished oath and unshaken credit. Before I proceed to submit to the Court the Law which seems to bear on this case, I deem it necessary to advert to one or two complaints preferred against me in the Defence. 1st That I did not establish the fact of the Prisoner being connected with a band of ruffians---It was not necessary---I adduced the fact only as having been the original cause of Mr. Goldney's loading his pistol, and never had an idea of proving precisely the fact itself. But it is not too late for the Prisoner to examine Mr. Becher, who is still here, and put to him the single question, whether he did

or did not tell Mr. Goldney so, and if he did not whether he ever heard it himself. It was an act of mercy to Mr. Torckler, who at that time was on intimate terms with Mr. Becher, that I have not called the latter on several points. Again it is objected that there is no proof of a second target--my answer to this is that the Court seemed to be against pursuing this subject at all, and I instantly dropped it, as well as the proof of his vowing the ruin of *that Officer*. Referring to that part of the Defence in which it is said, that only four shots were fired by Mr. Torckler, at this figure, and to the assertion that my description of this figure being drilled "through and through" was in the usual style of exaggeration which obtains through my address, I beg the attention of the Court to the 4th question of the 6th day by me to Lieut. Wilson "Was it drilled through and through with bullets?" Answer, It was.

The Court has heard a great deal about my want of Humanity and suppression of the truth, in reference to the detention by me of certain correspondence---and you are told that I determined to keep them to "*aid the Prosecution*" that they were referred to in the Opening Address---and that Lieutenant Goldney was examined upon matters which I knew, or ought to have known could only be ascertained from the papers themselves." As to the detention of the papers, the Court may judge from the use that has been made of them, how far my opinion as to their unconnectedness with the Charge before you---was correct-- for it has not been even read. But I would ask, *how* did I refer to them in the Opening Address? By way of *aiding* the Prosecution, when I said distinctly they had nothing to do with it---Again I would ask, *who* examined Mr. Goldney about the papers? Did I, to *aid* the Prosecution-- look to the 3rd Day's Proceedings and the Prisoner's 15th Question, and my protest against their admissibility--it will furnish the best answer to this misrepresentation---up to this moment I can assure the Court that I have not read the great majority of them letters.* I shall not follow the Prisoner's plan of using hard words---when soft ones will do---the former are evidence of a bad cause, the latter, of one, which requires simple illustration without much pressing. As I before said I presume the Court will have the whole of the evidence (at any rate that of Mr. Goldney and his two servants read over) before the Court proceeds to consider of its finding, and I shall therefore only add a very few remarks on the Law of this case---Either it is one wherein Murder would have been committed, had Lieutenant Goldney fallen, or it would have been excusable homicide by necessity, by reason of Mr. Torckler's having received a sufficiently legal and violent provocation from Mr. Goldney, and that, in firing at him two shots, Mr. Torckler was compelled to do so for the safety of his life.

* "The Officer mentioned" substituted in the copy sent to Head-Quarters, instead of the words "that Officer."

* Either this declaration of the D. J. A. G. or his assertions contained in the 2d and 4th Paragraphs of his Letter, Appendix, No. 34. G. Page, 107, must be in accordance with the truth.

This question lies in a nutshell *if you believe the evidence* which has been called. Mr. Goldney says he found him in his sleeping room when he went out. The Bearer, Jowahir, states that when Mr. Torckler arrived at the door, the conversation occurred without his Mr. Torckler's entering apparently, but Mr. Goldney immediately called out, as if alarmed and agitated, "Bearer, Bearer, turn him out:" this he was at full liberty to do after finding the other would not attend to his desire to leave the premises, and he corroborates his master in saying that notwithstanding Mr. Goldney's desire to him to leave the house, and his, Mr. Goldney's, himself *retreating* to his Zenanah, his most private apartment, and after his having, as the Bearer says, given orders to turn Mr. Torckler out, the Prisoner still insisted on entering, or if he had entered before (it matters not) still determined to remain in Mr. Goldney's sleeping room, and to seek for him by opening a door which Mr. Goldney had previously slammed to, whether quite so, or a part of it was left open is immaterial, for it shewed *his* wish to avoid Mr. Torckler, from the commencement; and if this Court were to admit that Mr. Goldney's not remembering whether he shut the door *quite close* or left it half open, or a little so, is in this case to destroy any part of his testimony, it is time that men should carry a rule and compass about them, and when their lives are attempted, should instead of seeking safety in flight, or attempting the defence of themselves, or the apprehension of their assailant, set about drawing a plan of their premises, and making distinctly feet and inches by a scale. Mr. Goldney has sworn that he *did* return to his own private Zenanah room, after having ineffectually endeavoured to get Mr. Torckler out, without violence—and that Mr. Torckler followed him, notwithstanding a personal and repeated order to him peremptorily to leave the house. Mr. Goldney has sworn that he *did not* return to the room where Mr. Torckler was till the latter came and opened the door. It was attempted to make Mr. Goldney swear that he had returned to and beyond the door when Mr. Torckler first fired. In page 63* of the Defence, it is stated that Mr. Goldney acknowledged having advanced several *paces* into the Bow room before the first fire---I affirm that he did not acknowledge any thing of the kind---he said about or perhaps one yard. Question. Did you take the pistol from under the pillow before you again saw him advancing (i. e.,) after Mr. Goldney had retreated to his Zenanah? Ans. No. Q. What was the reason for your doing so? Ans. I began to perceive that it was difficult to say who was to leave the house---myself or Mr. Torckler---and having carried my forbearance as far as any man of spirit could do I was resolved

* *Vide* Page, 152. A reference to the last line but one of this Page will shew that "feet" and not "*paces*" was the word used. The D. J. A. G. on coming to this part of his Address was corrected accordingly by the Prisoner, and his friends, and told that he had misquoted the word: the remonstrance however passed unheeded; and he persisted in retaining this, as well as several other, wilful and shameful misrepresentations, (though pointed out to him at the time) with which indeed his Reply abounds.

to defend my own private apartments from intrusion. Q Do you swear positively that you did not take your pistol up before you found that intrusion was likely or had been commenced? Ans ---I do swear that.---The Bearer and Khidmurgar have sworn that Mr. Goldney had no pistol in his hand when Mr. Torckler first fired. As Servants of Mr. Goldney their evidence is to be very cautiously sifted, but it is not by oral evidence alone that this Charge will be supported or negatived, but by circumstantial proof. After the first fire what was the conduct of the two parties? Who retreated and in what direction? They both recoiled after the first fire---"Mr. Goldney to his Bed room and by his own plan, Mr. Torckler to a better position than his first fire---Is this so or not?---Look to that plan and decide whether after the first shot of Mr. Torckler and removal from spot No 2 to No. 3, whether he could not as the Law requires in a case of homicide in self-defence, have rushed out of the door he had entered and which was open and close to him, instead of entering more *into the centre* of the room; *away from the door he entered at*, and more opposite to the door into which Mr. Goldney was rushing"---This one fact strikes me to be of vital importance. "Homicide in a man's own self-defence seems to be, where one, who hath no other possible means of preserving his life from one who combats with him upon a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity---1. How, C. 223. 13. It will be for the Court, as Judges both of the Law and of the fact, to say whether Mr. Torckler was reduced to the *inevitable necessity here alluded to for the preservation of his life*, and whether instead of firing the second shot (for these remarks apply most closely to the second fire) he could not have escaped from the room by the door at which he entered, remembering all the time that to have this second shot he retired *further from the door* (of his entrance) more into the room, and Mr. Goldney during these his movements was trying to screen himself. And again---"And not only he, who upon an assault retreats to a wall, or some such strait, beyond which he can go no further before he kills another, is judged by the law to act upon unavoidable necessity, but also he, who being in such a manner and in such a place that he cannot go back without manifestly endangering his life, kills the other without retreating at all. 1 How, C. 19, 814 In this passage are two points: first, that a man who is assaulted suddenly, and retreats to a wall or some other place and can go no further may lawfully kill his assailant. Is this Court of opinion, even taking Mr. Torckler's own argument into play, that he either when he first saw Mr. Goldney after the latter had gone for a Pistol,---and much more, after Mr. Goldney had received the first fire and retreated,---could not have retreated out of the house before a shot was discharged.

* The whole of this clause beginning with "*Mr. Goldney to his Bedroom*," and ending with "*rushing*," omitted by Lt. Palmer in the copy he sent to Head-Quarters with the Proceedings, and the following sentence substituted in its room:---"But the Court will decide whether Lt. Torckler could not as the law requires in a case of homicide in self defence he should have done, have rushed *out* at the door he had entered and which was open and close to him instead of remaining there."

Even supposing Mr. Goldney (I will put the most favourable case I can for Mr. Torckler)---supposing Mr. Goldney to have fired first, and that Mr. Torckler was somewhat excusable in returning it (though that will hardly do, for how came he to have two pistols ready, and so primed as not to fail, while the other was obliged to go for *his one*, which after all would not go off?) nevertheless supposing the first fire, (or attempt on Mr. Goldney's part, attempts and the deeds themselves now are the same) to have been somewhat doubtful, what can be said to the second fire from Mr. Torckler? Under what circumstances did it take place? *He went, be it remembered with two pistols---they are not very pacific disputants, and therefore their possession was unlawful, and explains little points on which there are doubts. He, Mr. Torckler, insists, that he was stooping down to pick up his second* pistol which had slipped through the aperture made for the barrel in the pocket of his Pantaloon, and that he saw Mr. Goldney deliberately aiming at him. I do not wish to shake your belief on this point---because it will not at all interfere with the law of the land---and which I shall now avow my belief and opinion of---and it is this---that if you believe Mr. Goldney to have desired the Prisoner to leave his verandah, or his house, no matter where the colloquy took place (though it would be worse for the Prisoner if it occurred in the verandah, as has been sworn by one of the witnesses, because if it were there, the entering the house after the order to quit it was more unlawful than to remain in it when once in) and that Mr. Torckler would not do so, but in spite of the order to the Bearers to turn him out entered Mr. Goldney's house, against his will, and with pistols loaded, and concealed---and you further believe that Mr. Goldney retired to his bed-room, and did not return to Mr. Torckler (as Mr. Goldney has solemnly sworn) but that Mr. Torckler followed him, and fired one of his prepared loaded pistols, before Mr. Goldney shewed his; and that after this Mr. Torckler while he was doing so, changed position a few paces farther into the room, and farther away from the door at which he entered; and by which if inclined he might have escaped. (or he should have proved that it had been shut in the interim to prevent his departure, and to assist Mr. Goldney's attack upon him) and then fired a second shot in the direction of (it does not require to be proved at) an individual---if, I say, you do believe this, I do accept the challenge of the Prisoner (through his friend) at page 58† and do in the face of Heaven and my Country, represented by this Court....in the face of all the opinions of the five learned Barristers of the Calcutta Bar, (who have been consulted for the purpose of opposing me, but who*

† Page 150.

* The words "Lieutenant Goldney again retreated to his bed room and" inserted in this place, in the transcript sent to Head-Quarters; though they were not in the original.

* The Reader need only refer to Page 165 and 166 of the Defence, and to the references in the Plan, No. 2, facing the latter, to perceive that the first and not the "second" pistol, is the one insisted on; and here is another instance of the perverseness of the D. J. A. G. Lieutenant Palmer, in persisting to retain on record and to forward to Head-Quarters, what he knew, and was told by myself and friends at the time, was incorrect.

all agree with and confirm me) and he it spoken with reverence, under the correction of the Calcutta Bench, I do send it forth, as I am challenged to do, as a Lawyer, that Mr. Goldney's evidence rendered him guilty of an intent to murder him, or rather that there is evidence quite sufficient to go to a Jury, to state from the facts proved whether the intent in Law was proved, and I deny that any Judge would, by his solemn oath and the purity of his ermine, have dared to direct the acquittal of a Prisoner with such proof against him----I have been called upon to do what I have done, and I have obeyed the call, and will do so on any and every Law subject, which the Prisoner or his friend can dispute, notwithstanding the taunt by which in this instance the challenge was held forth, that "although the man who could lay his hand upon his heart and say from his knowledge of Law that, *it did so*, might be a sincere man *perhaps*, but the knowledge he relied on would be much too small for the situation of a Deputy Judge Advocate." If the knowledge I possess for the situation of a D. J. A. be too small, after this opinion, there will be no occasion in future for the opinions of two Advocates General, and three of the Calcutta Barristers.

But there is another light in which Mr. Torckler's conduct on the 9th August is to be viewed. I will suppose that he went to Mr. Goldney with the intention of making Mr. Goldney sign the paper in evidence, declaratory of his being satisfied with Mr. Torckler as an Officer and a Gentleman, or in the event of a refusal on Mr. Goldney's part, to make him give him instant satisfaction and to offer him one of the pistols, and thus fight without seconds,---the Prisoner has indeed almost avowed that his object and intention were such. Now, if they were, I hesitate not to affirm, that the Prisoner went there with an *evil* intention, sufficient to manifest the malice which the Law requires in a case of murder.

It is acknowledged that his hawk was laid on the 8th August the day he received orders to quit the Regiment, so that he might start on the 12th,-----and that he then expressly cut the pockets of his Pantaloons, for the purpose of letting the barrels through, in order that the butt end might not be seen-----that he went, at eight in the morning, into the bed room of a man whom he had not been on terms with for nearly three years, and there tendered for his signature the note in evidence, with the words "If you do not acknowledge that I have offered you the satisfaction of an Officer and a Gentleman,"* (and here by way of answering the objection that these pistols were not loaded, I would ask whether Mr. Torckler went

* I defy Lieutenant Palmer, or any one else, to shew where I have acknowledged or admitted any thing of the kind imputed to me in the above words, denoted by inverted commas: the stated alienation of three years: my knowledge of the *Bow* room having been a *Bed* room; or the *alleged* object of carrying my Pistols concealed in my pockets.---neither the one circumstance, nor the other, has ever been admitted by me as stated here; and Lieutenant Palmer must therefore be taken again to have *witfully* misrepresented them to the Court, and to have preferred adorning to falsehoods in spite of the remonstrances of myself and friends at the time, which might serve to hang a fellow creature,---a Brother Officer! and that such was his devout and charitable design, may be gathered from the fact of his having been known at the commencement of the trial to avow, he had "*set his heart on hanging me*" or words to that effect!

with *powder only* to offer satisfaction to a Gentleman) what followed is before you, and on its character it is for you to decide.

With a very few observations from an eminent author, Paley, on the subject of evidence, and the probabilities of a crime being proved, and I have finished. (Paley's Moral Philosophy C. 9.)

"It is upon the principle of this observation, that I apprehend much harm to have been done to the community by the overstrained scrupulousness, or weak timidity of Jurors, which demands often such proof of a Prisoner's guilt, as the nature and secrecy of his crime scarce possibly admit of, and which holds it the part of a safe conscience not to condemn any man, whilst there exists the minutest possibility of his Innocence. Any story they may happen to have heard or read, whether real or feigned, in which Courts of Justice have been misled by presumptions of guilt, is enough, in their minds, to found an acquittal upon, where positive proof is wanting. I do not mean that Juries should indulge conjectures, should magnify suspicious into proofs, or even that they should weigh probabilities in *gold scales*; but when the preponderation of evidence is so manifest as to persuade every private understanding of the Prisoner's guilt; when it furnishes the degree of credibility upon which men decide and act in all other doubts, and which experience hath shewn that they may decide and act upon with sufficient safety: to reject such proof from an insinuation of uncertainty that belongs to all human affairs, and from a general dread lest the charge of innocent blood should lie at their doors, is a conduct which, however natural to a mind studious of its own quiet, is authorized by no considerations of rectitude or utility. It counteracts the care and damps the activity of Government; it holds out public encouragement to villany by confessing the impossibility of bringing villains to Justice; and that species of encouragement which, as just now observed, the minds of such men are most apt to entertain and dwell upon. There are two popular maxims which seem to have considerable influence in producing the injudicious acquittals of which we complain,---one is, "*That circumstantial evidence falls short of positive proof.*" This assertion in the unqualified sense in which it is applied, is not true:---a *concurrence of well authenticated circumstances* compose a stronger ground of assurance than positive testimony, unconfirmed by circumstances usually affords Circumstances cannot lie---the conclusion also which results from them, though deduced by only probable inference, is commonly more to be relied upon than the veracity of an *unsupported* solitary witness-----The danger of being deceived is less, the actual instances of deception are fewer, in the one case than the other.

What is called positive proof in criminal matters, as where a man swears to the person of the Prisoner, and that he actually saw him commit the crime with which he is charged, may be founded in the mistake or perjury of a single witness---such mistakes, and such perjuries are not without many examples---Whereas, to impose upon a

Court of Justice a chain of circumstantial evidence in support of a fabricated accusation, requires such a number of false witnesses as seldom meet together an union also of skill and wickedness which is still more rare ; and, after all, this species of proof lies much more open to discussion, and is more likely, if false, to be contradicted, or to betray itself by some unforeseen inconsistency, than that direct proof, which being confined within the knowledge of a single person, which appealing to, or standing connected with, no external or collateral circumstances, is incapable by its very simplicity, of being confronted with opposite probabilities.

The other maxim which deserves a similar examination, is this--- "That it is better that ten guilty persons escape, than that one innocent man should suffer." If by saying it is *better*, he meant that it is more for the public advantage, the proposition I think, cannot be maintained---The security of civil life, which is essential to the value and the enjoyment of every blessing it contains, and the interruption of which is followed by universal misery and confusion, is protected chiefly by the dread of punishment. The misfortune of an individual (for such may the sufferings, or even the Death, of an innocent person be called when they are occasioned by no evil intention) cannot be placed in competition with this object---I do not contend that the life or safety of the meanest subject, ought, in any case, to be knowingly sacrificed ; no principle of judicature, no end of punishment, can ever require *that*.

But when *certain* rules of adjudication must be pursued, when *certain* degrees of *credibility* must be accepted in order to reach the crimes with which the public are infested ; Courts of Justice should not be deterred from the application of those rules, by *every* suspicion of danger, or by the mere possibility of confounding the innocent with the guilty.--They ought rather to reflect, that he who falls by a mistaken sentence, may be considered as falling for his country ; whilst he suffers under the operation of those rules, by the general effect and tendency of which the welfare of the community is maintained and upholden."

On the same subject, viz. evidence, and the proofs of a crime, that humane and profound Philosopher, the Marquis Beccaria, shortly says,---"That certainty which is necessary to decide that the accused is guilty, is the very same which determines a man in the most important actions of his life." (Beccaria. C. 14. P. 47.)

The only question then is, are you satisfied or not, with the evidence adduced, that Mr. Forekler fired at Mr. Goldney with the malicious intent to murder him ? It will not do to say that he did *not go there with that intent on*---Has he proved sufficient legal provocation for his firing twice, or once at all ?---If he has, I join in prayer with him that you will speedily grant him a safe deliverance---but if he has not proved that, if it be proved that he went with an ill intent (all which is to be gathered or not, as you please, from the circumstances of the whole case) his previous threats, his approaching departure, under the full belief that he would not be spoken to by the Corps to which he was going---his hour of visiting Mr. Goldney---his muffled cloak, and well concealed pistols, and note ready written for Mr. Goldney to sign, or fight him for not signing ; from all these circumstances it will be for you, with caution and deliberation to decide whether he be guilty or innocent.

Ere I finally conclude I have to beseech the Court to favour me with a few seconds of its attention. I have gathered from this Day's Proceedings, the opinion of the Prisoner under trial, as to my wanton and uncalled for severity—and I have heard that this opinion is but too general both here and elsewhere. I would beseech those who entertain it, to reflect on the nature of my duties, as a public Prosecutor, and one who *must* not, if he would do his *duty* to the *world*, let any individual, be he Officer or private Soldier, escape through *his* neglect, or *his* preconceived notions of his innocence, or slip through *his* fingers, from mistaken, and improper feelings of pity and commiseration. *The very best laws are a dead letter, nay often a grievance (says Bolingbroke) unless they are *strenuously* and *honestly* executed. They *never* can be so executed, unless the spirit of them possess those to whom their execution is committed."

The spirit of this Law is strenuously against all attempts on life, because, the providence of God in preserving the individual assailed, is not to rescue from punishment the man who has shewn, that his heart, and mind were ready for the deed—the deed and the attempt are one in point of law—had the deed been committed and I had prosecuted him, because he was an Officer, with less rigour than you would have had me display to one of your violent private Europeans, doing the same deed, when should I have heard the last of your reproaches? The attempt is the *same* to me, though perhaps not to you, because you may think that *attempts* to commit these deeds, are not commensurate in Guilt and Malignity with the deeds themselves consummated: but I as a Lawyer, may not, must not think so, and however much I may respect and esteem the opinions, and court the good will, of Society, my conscience will not allow me to bow to it with servility, but will bear me up with triumph and consolation, e'en though the World and my Friends should scoff at, and scorn, and forsake me.

There is much in the Defence to which I have not adverted, but I did not consider it necessary, neither have I had time, for this Defence was put into my hands on Thursday night, and returned on Saturday afternoon, and if I have at all erred in many parts of it, I trust it may be attributed to the hurry in which I have written, and not to any *intentional or wilful design to do* aught that was wrong.

May be, Gentlemen, in whose hands are the issues of Life and Death, so direct your thoughts and judgments in the determination of this question, as that the verdict you shall return may be acceptable to him, conducive to the cause of truth, satisfactory to yourselves, and reconcileable with the impartial administration of Justice; If innocent, none will sign the record of his acquittal with more sincere delight than I shall—but if he be Guilty, bitter, sickening, and agonizing, as the

* "*Intention to do*" substituted in room of the words in Italics, in the Copy sent to Head-Quarters by the D. J. A. G. Lieutenant Palmer.

N. B: Many other variations from the original, such as the correction of grammatical errors &c. are to be found in the Copy submitted to the Commander in Chief; though not noticed here, as they were not considered by me of much consequence; but, thus much it is right for the public to know, that the *whole* of them were made out of Court, long after the trial was over, without their being previously made known to me, or even my concurrence being ever once asked. The reason why Lieut. Palmer thus falsified the record, on which depended the Sentence of the Court, and the life and reputation of a Brother Officer, is too obvious; but how he can reconcile such conduct with the above disavowal of "*any intentional or wilful design to do aught that was wrong*" with the *integrity* of a British Officer, or, with the *duty* of a Judge Advocate, on the *faithful* discharge of which so much depends; is for him to make manifest: but I leave him to the enjoyment of that "*triumph and consolation*" which he boasts, "*his conscience will bear him up with*;" or to such feelings of disappointment as will probably result from his having after all failed in the most sanguinary purpose he had ~~set~~ set his heart on.

task of pronouncing that verdict may be, you may not, dare not, by your Oath, and hopes of Heaven hereafter, refuse manfully to perform it.

The Prisoner, through his friend and adviser, Capt. McNaghten, addresses the Court as follows:

Mr. President and Gentlemen,

I have nothing farther that I should wish to urge, even if I were entitled to a rejoinder, on the case between the Prosecutor and myself. The assertions and denials are before the Court; but in explanation of the charge of ingratitude which the former would bring against me, on account of antecedently given advice that rendered me a service; I beg, in few words, to state that it was given me at Loodiana, at my own request, regarding the Mess transaction; and that as Lt. Palmer was of opinion that I had been hardly used in the matter, and thought a farther reference adviseable, I made one accordingly, and got a favourable decision.

While he was urging all he could of my Loodiana conduct, in the Opening Address, to render me culpable in your eyes, does he expect my gratitude for his having suppressed that, in one instance, at least, I was not very blameable; or does he expect his boast of former advice, though well founded, was to have hindered me from repulsing his subsequent violence, and endeavours to make me guilty of an odious felony? So much as to the strictly personal charge of ingratitude; all the others will be properly judged of by competent authority.

For his summing up, full of deliberate misrepresentations and suppressions of the evidence as it is, may God forgive him! for I can hardly at this moment truly declare that I do, though I trust that I speedily shall.

W. Y. TORCKLER.

The Court adjourns at 4 o'Clock, till Eleven o'Clock to-morrow morning.

12TH DAY'S PROCEEDINGS.

Cawnpore, Tuesday, the 15th December, 1829.

The Court assembles at eleven o'Clock pursuant to the Adjournment of yesterday.

The President, Members, Deputy Judge Advocate General all present.

The Prisoner appears in Court.

The Judge Advocate, at the request of the Prisoner, requests the Court's permission for a Rejoinder.

The Court is cleared and closed.

The Court decides on *not* receiving the Rejoinder.*

The Court is opened, and the decision read.

The Court is cleared and closed, and the Judge Advocate by desire of the President, reads over certain portions of the Evidence.

* *Vide Supplementary Appendix No. 3. being the Rejoinder which I offered but which the Court (without having it read, or even looking at it) rejected!!*

* *Finding.*---“ The Court is of opinion, and hereby pronounces the Prisoner to be Guilty of the Charge exhibited against him.”

Sentence.---“ The Court does, therefore, Sentence him, the Prisoner, Lieutenant W. Y. Torckler, of the 4th Regiment of Native Infantry, to be hanged by the neck till he be dead, at such time and place as His Excellency the Commander-in-chief may be pleased to direct.”

Approved

(Signed)

DALHOUSIE,

Commander in Chief.

Remarks by the General Court Martial.

The Court feels itself called upon to animadvert, in the strongest manner, on the harsh and scurrilous strain in which the Prisoner indulged on his defence towards the Deputy Judge Advocate General, which nothing but an anxious desire on the part of the Court, to leave him unshackled in his defence, prevented being checked at the moment.

The Court cannot but regret, that the Deputy Judge Advocate General, in his opening address, should have alluded to aggravating circumstances in the prosecution, which he subsequently failed to substantiate by evidence; this of itself could not fail of being beneficial to the cause of the Prisoner, and could not escape the notice of the Court.

But the Court would not be upholding its own dignity, as well as that of the honorable profession of arms, were it not to mark its reprobation of the employment of such terms of scurrility, as being disgraceful to the profession of arms, and which only recoil on the heads of those who (losing sight of their own dignity, as well as that of the profession,) make use of them.

Remarks by the Right Honorable the Commander-in-Chief.

The Commander in Chief has perused with deep concern, the Proceedings of this Court Martial, and the verdict pronounced by the Court has his entire concurrence and approval.

It appears to the Commander-in-Chief, that though the temper of the Prisoner seems to have been the greatest cause of his constant disputes, and his expulsion from the society of his Brother Officers, yet from the voluminous papers, unnecessarily dragging before the Court, the incidents of late years, His Excellency has observed a spirit of hostility towards the unfortunate Prisoner from his Brother Officers, little calculated to subdue or soften his unhappy and irritable temper. That they should withdraw from familiar and friendly intercourse is accounted for, but His Excellency conceives, there is an asperity in the notice of the acts of Lieutenant Torckler, not measured with their actual offence, but aggravated by recurrence to past events, with which they had no connexion; events which had been decided on by admitted Authority, and over which oblivion might justly

have been extended : the operation of such a conviction on the mind of the Prisoner, is evinced in his exclamation, after the atrocious deed " that desperation had driven him to it." †

It is impossible, in the circumstances in which the Prisoner was placed, to consider his visit to Lieutenant Goldney to have been for the purpose of a duel, in its accepted sense, but that the Prisoner contemplated forcing that Officer into conflict, unless he signed the paper of character.

Taking into consideration all the circumstances attending the case of this unhappy man, the Commander-in-Chief is willing to extend to him the powers of mercy which are entrusted to him, and in that feeling remits the Sentence pronounced.

The Commander-in-Chief deeming Lieutenant Torckler to be a very improper person to remain in the Army, has submitted to Government his recommendation that Lieutenant Torckler be immediately suspended from his Commission, and an application made to the Court of Directors, to dismiss him from the Service.

The Commander-in-Chief fully concurs in the observation of the Court on the style of the defence, as well as their remark on the opening address of the Deputy Judge Advocate, to which His Excellency also adds his disapprobation of the Deputy Judge Advocate's intemperate reply.

The whole Proceedings appear to have been conducted with an acrimony altogether inadmissible before a Court Martial ; and the Commander-in-Chief greatly regrets, that what the Court so justly condemn they should have admitted on their Proceedings.

Lieutenant Torckler is to be released from arrest, and directed to proceed to the Presidency, where he will report his arrival to the Town Major of Fort William, from whom he will receive further instructions.

The above Order is to be read at the head of every Regiment, and every body of Troops composing a detachment, or a Garrison.

By order of His Excellency the Commander-in-Chief.

CHRIS. FAGAN,

Adjutant General of the Army.

† Capt. Caley positively swore that the exact expressions I used were " desperation, desperation, drove me to it ;" in this he would not admit the bare possibility of his being mistaken, & denied as stoutly that any farther conversation passed, tho' it is remarkable that none of the other persons present on the occasion professed a clear memory on either point. Now, as God is my witness, Captain Caley swore most falsely : for the actual words I used were, " it will be seen by and by, how I have been driven to desperation"---words which bear a very different interpretation to those employed by Captain Caley. This occurred immediately after my delivering my Pistols up to him ; when I addressed him in the following words---" Capt. Caley, I declare to you now, in the presence of these Officers, that had not Mr. Goldney first attempted to fire at me, I should not have made use of my fire arms on any account." Although his memory was so fertile on all that would serve to screen their common and intimate friend : he, without reservation, denied that I had said any thing of the kind, (because he knew it would benefit me) while the other witnesses could only say " they did not remember."

N. B. All notes and marginal references, throughout this Publication, to which my initials are not attached, are yet to be considered wholly mine, and not as forming any part of the official record of the Deputy Judge Advocate General.

PART, 3.

C o n t a i n i n g

An *APPENDIX*, exhibiting the *DOCUMENTARY EVIDENCE*

Adduced on the Trial ;

Also

A *SUPPLEMENTARY APPENDIX*, of various other

Documents connected with the case of

Lieutenant Corckler,

APPENDIX:

With a view to save the time of the Court, the Deputy Judge Advocate General on the one hand, and the Prisoners on the other, consent to submit the whole of the Correspondence in this Appendix, for admission, without regularly proving each letter. They are principally Copies from the Originals, and some are in Original.

The Court assents to the proposition, and dispenses with formal proof of each document.

Correspondence, A.

Connected with the dispute between Lieutenant Torckler and Lieutenant Goldney in May 1828, and the decision thereon of Brigadier General Adams, C. B., Commanding the Sirhind Division.

—:o:—+—:o:—

TO LIEUT. GOLDNEY,

Commanding Light Infantry Company.

SIR,

Letter No. 1. My Tindal having reported to me, that your Pay Havildar has conveyed to him some orders from you, regarding the Target Practice, will you inform me if such is the case, and what was the cause of your doing so?
A.

Your's Obeyingly,
W. Y. TORCKLER.

TO LIEUT. TORCKLER.

SIR,

No. 2. I recommend your ascertaining the facts of a case, before you again address a person who is not in the habit of communicating with you, unless in reply to No. 1.
A. when he is desired to do so.

You have not half the right to write to me that my Havildar has to speak to your Tindal.

Your's &c.

P. GOLDNEY,

TO LIEUT. GOLDNEY.

SIR,

No. 3. Any other method of ascertaining the facts of the case in preference to the disagreeable one of communicating with you, would you must well know in reply to No. 2.
A.

(II)

have been gladly adopted by me, but as no other presented itself at the time so likely to elicit the truth, and as I could not suppose that you were so ignorant of what is due from one Gentleman to another in cases of unavoidable intercourse, I did contemplate a more polite and courteous reply from you.

A report having been publicly made to me, that you had been sending Orders to my Tindal (which I consider a very improper interference in my Department) in order to ascertain the truth, I politely acquainted you with the circumstance. You have not denied, nor have chosen to give me, any information regarding it.

Your's Obediently,
W. Y. TORCKLER.

To LIEUT. TORCKLER.

SIR,

- No. 1. Lieutenant Goldney has requested me to offer the enclosed a second time for your perusal, as in the event of your refusing to continue this mode of communication, it is absolutely necessary that some other should be established.

Your Obedient Servant,

GEO. SALTER, Lieut.

4th Regt. N. I.

To LIEUT. SALTER.

SIR,

- No. 5. Having already determined on the receipt of Mr. Goldney's uncourteous
reply to No. 4. note to make it the subject of a public communication to the Commanding Officer, I must decline all private communication with him, which I was never desirous of.

I might apply the last paragraph of his note to me, to yourself, were I as insensible to the rights of every Gentleman as he appears to be.

Your's Obediently,
W. Y. TORCKLER.

SERVICE.

LOODIANAH; 5TH MAY, 1828.

SIR,

- No. 6. 1. In requesting, you will submit the accompanying Copies of a correspondence between Lieutenant Goldney and me, to Major Holbrow, Commanding the Regiment; I have the honor to acquaint you for his information, that the Tindal reported to me, that that Officer had sent him a message by his Pay Havildar, ordering him to send two Targets for the practice of the Light Company, otherwise he should immediately march back to the lines, thereby holding out a kind of threat to me.

2. As I had already received specific instructions, relative to the Practice from Major Holbrow, I could not suppose any alteration had been authorized by him, or if so, concluded I should have been informed of it in the usual manner, and therefore was not a little astonished at Lieut. Goldney's exercising any interference in my Department, any inclination to which, unless timely checked is calculated to introduce confusion and disorder; and appears to me to be totally at variance with the principles of Military discipline and subordination.

I beg to submit to the Commanding Officer, whether the tone of Lieutenant Goldney's letter is that, which on occasions of a public nature ought to be adopted, or encouraged in a Junior Officer, towards his Senior, or whether my first note called for the evasive, insubordinate, and uncourteous reply it met with.

To
LIEUT. MACDONALD,
Adj't. 4th Regiment N. I. }

I have the honor to be,

SIR,
Your Obedient Servant,
W. Y. TORCKLER, LIEUT.
Quarter Master.

No. 479.

SERVICE.

LOODIANAH; 5TH MAY, 1828.

SIR,

No. 7. With reference to your letter of this date, to my address I am directed by
in reply to No. 6. the Commanding Officer to require your attendance at his Quarters this
A. Evening at 6 o'Clock.

To
LIEUT. TORCKLER,
4th Regiment N. I. }

I have the honor to be,

SIR,
Your Obedient Servant,
A. R. MACDONALD,
Lieutenant-Adjutant.

No. 482.

LOODIANAH; 5TH MAY, 1828.

SIR,

No. 8. I have to acknowledge the receipt of your communication of this day's date, which has been laid before the Commanding Officer. With reference to the correspondence which accompanies it, Major Holbrow regrets that you should have addressed Lieutenant Goldney in the way you have done, for if, as you say in the 3d Paragraph, the subject was of a public nature, you ought to be aware that you can not correspond with any Officer of the Regiment, except through the prescribed channel; if, on the other hand, your note is to be considered as a private communication, from one Brother Officer to another, the Commanding Officer cannot but observe, upon the very unconciliating tone and style in which it is couched, and which could scarcely be expected to elicit any other reply, than the one received.

If you considered any part of Lieutenant Goldney's conduct as an improper interference in your Department, the correct mode of procedure would have been, to have brought the same in a regular manner, to the Commanding Officer's notice, and this was more particularly the line of conduct, which you should have adopted, on receipt of Lieutenant Goldney's note (No. 2.) Instead of which you have permitted yourself to address to that Officer a highly irritating and offensive note (No. 3.) for no purpose that the Commanding Officer can perceive, unless the very reprehensible one of hurting and annoying Lieutenant Goldney's feelings, while you avoid the possibility of further discussion by forwarding for the Commanding Officer's information that which had already taken place.

To —

Lieut. and Qr. Mr. TORCKLER,
4th Regiment Native Infantry.

I have the honor to be,

Sir,
Your Obedient Servant,
A. R. MACDONALD,
Lieut.-Adjutant.

TO LIEUT. TORCKLER.

No. 9 A. Sir,

In thus addressing you I am aware that I may subject myself to the charge of taking a liberty with you which is not warranted by the term on which we are, but I trust that the propriety of the motive, will excuse the irregularity of the proceeding.

I having had the honor to communicate with you yesterday on the subject of your dispute with Lieutenant Goldney, he has requested me, to become the medium of conveyance of the enclosed Copy of a Statement, presented by him to the Commanding Officer, of which Lieutenant Goldney considers it but fair that you should be in possession.

6th May 1828.

Service,

Your Obedient Servant,
GEORGE SALTER.

No. 10. A.

LOODIANAH MAY, 5th 1828.

Sir,

1. I beg to transmit the following statement for the consideration of the Commanding Officer.

2. About Sun set last Evening I was riding across the Parade. I spoke to the Havildar of my Company, and desired him to remind the Classce, who was to attend at Target practice next Morning to have the large Target there. I spoke also to Ramnath Sing Sipahce, Light Company, (attached to the Adjutants Office) to the same effect who said he would tell the Tindal,---my meeting with these men was entirely accidental.

3. My reason for mentioning this was to prevent my experiencing the delay which has occasionally occurred from the wrong Target being brought to the But, in which case the distance from the Magazine renders it inconvenient to await the arrival of the one required ; especially at this Season.

4. If I erred in this precaution the proper channel for redress was open to Lieutenant Torckler, thro' the Adjutant to the Commanding Officer.

5. About 8 o'Clock the same evening, I received a note from Lieutenant Torckler to my Official address, of which No. 1, is a copy.

6. Considering that that Officer was not entitled to address me on that subject, and the note itself being vague and unintelligible, I replied by the note No. 2.

7. In reply to my note I received from Lieutenant Torckler the paper No. 3 my answer to which having been returned unopened, I beg to offer the following observations.

8. I need scarcely enlarge upon the objectionable tone of the paper in question.

9. Considering the unfriendly terms on which Lieutenant Torckler and myself have been for upwards of two years, I am at a loss to conjecture on what grounds Lieut. Torckler could expect any courtesy from me, or indeed any other answer than was sent, especially since it is not two months ago, that I was obliged to appeal to the Commanding Officer of the Station against his (Lieutenant Torckler's) want of common civility in sending a person to desire one of my trees to be lopped without the usual decency of a note to explain his errand.

10. I conceive that had Lieutenant Torckler, annoyed by the tenor of my reply to his first note, referred it to the Commanding Officer next morning, he would, indeed, have been entitled to his protection; but that the commanding Officer's displeasure would have been confined to an injunction on me to restrain *angry* feelings and caution to Lieutenant Torckler not to address me on unauthorized occasions in future.

11. But in the present instance I beg to impress most forcibly upon the cmdg. Officer's notice, that Lieutenant Torckler has taken upon himself, upon receipt of the offensive note, to reply to it by insulting observations from the obvious consequences of which he has screened himself by an appeal to the commanding Officer, and having availed himself of our private communications to make impertinent comments upon my conduct, he has returned unopened, (altho' twice tendered for his perusal,) a letter containing, for ought he knew, an explanation of my motives for the style in which my reply was couched.

12. Altho' Lieutenant Torckler's opinion must now be a matter of total indifference to me, yet I owe it to myself and my Brother Officers (many of whom are on intimate, and all with the exception, of that individual, on friendly terms with me) I owe it to my Commanding Officer, and Lieutenant-Colonel Stewart to vindicate myself from the imputation of the habitual breach of politeness and courtesy implied in Lieutenant Torckler's second note.

13. For this purpose I need only refer to occurrences within the memory of every Officer attached to the Regiment during the last two years, to shew the disagreeable unconciliating demeanour of Lieutenant Torckler, while I confidently appeal to the records of the Regiment to prove the difference between my conduct

and that of the Officer alluded to in matters of public duty and deference to our common superiors.

14. In conclusion, as Lieutenant Torckler has thought proper to bring this affair to the notice of the Commanding Officer, I rely upon Major Holbrow's justice to mark his sense of that Officer's unwarrantable behaviour to me in commencing a correspondence as gratuitous on his part as troublesome and unpleasant to me.

To
 LIEUT. MACDONALD,
Adjutant, 4th Regt. N. I.

I have the honor to be,
 Sir,
 Your most obedient Servant,
 (True Copy,)

(Signed) P. GOLDNEY,
 Lt. 4th Regt. N. I.

No. 483.

No. 11. A.

Sir,

Loodianah, 6th May, 1828.

I am directed by the Commanding Officer to return the accompanying statement received from you, late last night. The business to which it refers having been already decided upon—should circumstances hereafter call for a document of the kind, application will then be made to you for your statement.

To
 LIEUT. GOLDNEY,
4th Regiment N. I.

(Signed)

I have &c.
 A. R. MACDONALD,
Lieutenant and Adjutant.

No. 12. A.

LOODIANAH; 6TH MAY, 1828.

Sir,

I beg you will do me the favor to report to the Commanding Officer, that notwithstanding the strict charge he delivered yesterday, Evening at his own Quarters to Lieutenant Goldney and to me, in presence of Captain Wilton and yourself, that no further communication was to take place between us on the subject late under discussion, that Officer has disregarded his injunctions by sending me, through the medium of his friend Lieutenant Salter, this morning, a Copy of a Statement, containing such reflections on my Character that I feel myself compelled to solicit permission to wait upon Major Holbrow, Commanding the Regiment, to point them out to him, that, as an Officer under his Command, I may have the benefit of his advice.

I have the honor to be,

To
 LIEUT. MACDONALD,
Adjt. 4th Regiment N. I.

Sir,
 Your Obedient Servant,
 W. Y. TORCKLER.

(VII)

No. 484.

No. 13. A: *LOODIANAH, 6TH MAY, 1828.*

SIR,

With reference to your letter of this day's date I am directed by Major Holbrow, to say that he will be happy to see you at his quarters at sun-set this evening.

To

LIEUT. TORCKLER,
4th Regiment N. I. }

I have &c.,
(Signed) A. MACDONALD,
Lieutenant and Adjutant.

No. 486.

No. 14. A:

SIR,

Loodianah, 6th May, 1828.

Lieutenant Torckler having represented that you have forwarded to him a Copy of the Statement returned to you to-day from this Officer through the medium of Lieutenant Salter, I am desired by the Commanding Officer, to express his regret that you should have paid so little attention to the injunction which he gave last evening that no further private notice should be taken of the business? as the statement alluded to had been returned and decided upon prior to the receipt of your communication he trusts that you will see the propriety of withdrawing the copy sent to Lieutenant Torckler.

To

LIEUT. GOLDNEY,
4th Native Infantry. }

I have &c.
(Signed) A. R. MACDONALD,
Lieutenant and Adjutant.

No. 15. A.

PRIVATE SERVICE.

MY DEAR TORCKLER,

As Lieutenant Goldney has refused to withdraw his Statement, the Commanding Officer intends to bring the whole business under the notice of Lieut.-Colonel Stewart.

Your's &c.
A. R. MACDONALD,

No. 16. A

SERVICE.

LOODIANAH; 7TH MAY, 1828.

SIR,

1. I have this instant received your "private Service" communication, apprising me, that Lieutenant Goldney declines withdrawing his Statement, and of the intention of Major Holbrow to submit the affair to the notice of Lieutenant Colonel Stewart.

2. As I feel fully convinced, that Lieutenant Goldney's intention was to inveigle me into a private quarrel, although he was perfectly aware that from

late occurrences, I was averse to enter into one, on slight grounds. I am fully prepared to send in charges against that Officer when called on by His Excellency the Commander-in-Chief so to do.

3. I beg that this letter may accompany the Statement when submitted to Lieutenant Colonel Stewart.

To
LIEUT. MACDONALD,
Adjt. 4th Regiment N. I.

I have the honor to be,

SIR,
Your Obedient Servant,
W. Y. TORCKLER, LIEUT.
Quarter Master.

No. 487.

No. 17. A.

LOODIANAH; 8TH MAY, 1828.

SIR,

It is with much regret that I find myself under the necessity of intruding on the Commanding Officer's notice, copies of a correspondence between two Officers (Lts. Torckler & Goldney) of the Regt. under my Command, which the Commanding Officer will observe, had its origin in a most trivial occurrence, and which might have been avoided altogether, had not these Officers permitted their feelings of private personal pique, to enter into the discussion of matters connected with public duty.

From the Style and tone of Lieut. Torckler's note No. 4, I directed that Officer and Lieut. Goldney, to attend at my quarters, I then in the presence of Captain Wilton and the Adjutant, delivered my sentiments as expressed in letter No. 5, at the same time intimating my *desire* that no further private notice should be taken of the business.

I did not allude to the improper style of Lieutenant Torckler's letter No. 1, as I concluded that the opinion I had delivered would be looked upon as applicable to the whole affair.

Lieutenant Goldney having in the letter No. 6 (accompanying his statement of the case) expressed his satisfaction with the mode in which the affair had been settled, I was in hopes that the matter would have rested here, and that these disagreeable differences were ended, but I regret to say that Lieut. Goldney forwarded a Copy of his Statement (which considering the style in which it is couched, I could never consent to retain as a Regimental record) to Lieutenant Torckler, as communicated to me in that Officer's letter No. 9,---immediately on receipt of which, I directed letter No. 11---to be sent to Lieutenant Goldney, in hopes that he would so far meet my wishes as to withdraw the Copy sent to Lieutenant Torckler. In his answer No. 12, I am sorry to say he declines to comply with my request, and follows it up with another letter No. 13, which setting aside the very wrong view which he takes of the steps already taken, is far from being written in that respectful tone and spirit, which from an Officer under my Command, I had a right to expect. To point, I solicit Lieut.-Colonel Stewart's attention.

I advised Lieutenant Torchler when he waited upon me, on the evening of the 6th, to return to Lieutenant Goldney his offensive statement, if applied to for it, as the document in question had not been received as a Regimental record.

It is unnecessary for me to make any further observation on the merits of the case; the temper and character of the parties concerned are well known, to Lt. Colonel Stewart, and I have only to express my regret that circumstances should have at all obliged me to obtrude upon his notice these very voluminous documents.

To
 LIEUT. MACDONALD,
Station Staff, Loodianah.

I have, &c.,
 (Signed) J. HOLBROW, Major,
Commanding 4th Regiment N. I.

No. 18. A.

LOODIANAH; 8TH MAY, 1828.

SIR,

1. I regret in consequence of Lieutenant Goldney having determined, contrary to the recommendation of Major Holbrow, Commanding the Regiment, not to withdraw his public letter of the 5th May, 1828, that it becomes my duty to forward the accompanying charges against that Officer.

2. In consequence of being thus compelled to defend my character pertinaciously and publicly assailed by a Junior Officer, it becomes necessary to recapitulate some circumstances in explanation of my conduct.

3. I regret extremely that in your letter of the 3d May, 1828, Major Holbrow seemed to consider my first note to Lieutenant Goldney objectionable; for it seems to me quite of an inoffensive nature; the style was formal, not rude; and the form of address was such as was customary for Lieutenant Goldney to use when he had occasion to write private notes to me. With submission therefore to Major Holbrow's Judgment, I respectfully submit, that however formal and distant my note may have been, Lieut. Goldney, was not warranted on the receipt of such a communication to return so rude & uncourteous a reply to a simple query of mine, with a view to ascertain the truth of the Tindal's report before I ventured to trouble the Commanding Officer. After the receipt of such note, I might have expected that some allowance might have been made for my irritated feelings, as well as for those of Lieutenant Goldney, and that further discussion was possible, is manifest from the fact of Lieutenant Goldney, having subsequently transmitted to me in a private way through the medium of his friend a most objectionable public Statement.

4. For an error in judgment, I a Staff Officer have been compelled to to the humiliation of a public reprimand under circumstances of a most humiliating nature, and Major Holbrow assured me on the Evening of the 6th Instant, that he considered this quite sufficient, and that Lieutenant Goldney ought to have been quite satisfied.

5. If however Lieutenant Goldney's private feelings were so much wounded, that he could not rest satisfied with the public reprimand which I received from Major Holbrow, and which he witnessed; and he considered any further redress necessary, the channel of public communication was still open to him; instead of which he chose to convey to me through his friend Lieutenant Salter, a

Copy of a Statement forwarded by him to the Commanding Officer, not only in reference to my conduct in this affair, but reflecting on my general character, and attempting to prejudice me in the estimation of Major Holbrow and the Officers of the Regiment. Even had I stood fully exonerated in Major Holbrow's opinion of the imputations and reflections contained in Lieutenant Goldney's Statement, and Lieutenant Goldney had been permitted to withdraw his Statement, without my knowledge that such a communication had been made, had any thing afterwards transpired or had I by any means become acquainted with the transaction, I must have taken precisely the same steps which I now do in vindication of my character.

6. To conclude I now feel it absolutely necessary to court a full investigation into my own conduct, should such be considered necessary, and I look forward to the protection of my Superiors from the unmerited and unjust calumnies of a Junior Officer, as I have been publicly told by Major Holbrow, that, on the next occasion, he would hand up the whole of my conduct to His Excellency the Commander-in-Chief. I earnestly and respectfully solicit, that I may now have an opportunity given me of rebutting any charges that the Officer Commanding the Regiment may have to prefer against me on this occasion.

To

LIEUT. MACDONALD,
Adjt. 4th Regiment N. I.

I have &c.,

W. Y. TORCKLER,
Quarter Master,
4th Regiment N. I.

LOODIANAH ; 8TH MAY, 1828.

CHARGES.

I charge Lieutenant Philip Goldney, 4th Regiment Native Infantry, with conduct unbecoming the character of an Officer and a Gentleman, and subversive of Military discipline.

1st. For conveying to me his Senior Officer, on the 6th May, 1828, through the medium of Lieutenant Salter, of the same Regiment, the Copy of a public letter dated 5th May, 1828, Signed by Lieutenant Goldney, and addressed to the Adjutant of the Regiment, containing wilful and malicious misrepresentations of my conduct, and impeaching my character as an Officer and a Gentleman, with the evident intention of inducing me to take private notice of an affair on which Lieutenant Goldney knew Major Holbrow had positively interdicted all further discussions between us.

2nd. For persisting to forward a public letter, dated 5th May, 1828, containing malicious and wilful misrepresentations of my conduct, and impeaching my character as an Officer and a Gentleman, after Major Holbrow, Commanding the Regiment, had recommended Lieutenant Goldney to withdraw the said letter.

W. Y. TORCKLER, LIEUT.

Intr. and Qr. Mr. 4th Regt N. I.

No. 19. A.

LOODIANAH; 9th MAY, 1828.

Sir,

1. I have the honor herewith to enclose a Statement with Copies of the whole of the correspondence, together with charges against Lieut. Goldney, which I request may be transmitted to His Excellency the Commander-in-Chief, through the prescribed channels.

2. With reference to the last Paragraph of my Statement, I regret any necessity should exist for inserting it at all; but if I have misunderstood Major Holbrow's meaning, and it is not his intention to hand the whole of my past conduct up to His Excellency, I shall with pleasure expunge the latter clause of that Para: as Major Holbrow must be aware that I have been most peculiarly and unfortunately situated, and that, whatever faults I have committed I have been already admonished and reproved for them.

To
LIEUT. MACDONALD,
Adjt. 4th Regt. N. I. }

I have, &c.,
W. Y. TORCKLER,
Adjutant, 4th Regt. N. I.

No. 20. A.

LOODIANAH; 9TH MAY, 1828.

Sir,

I am directed by Major Holbrow, Commanding the Regiment, to return your letters and Copies of correspondence received this day, also the Charges preferred by you against Lieutenant Goldney, and to express his surprise that you should have forwarded documents of the kind, aware as you are that the subject of the difference between you and Lieutenant Goldney is at present under the consideration of the Officer Commanding the Station.

To
LIEUT. TORCKLER,
4th Regiment N. I. }

I have, &c.,
A. R. MACDONALD,
Lieut.-Adjutant, 4th Regt. N. I.

No. 21. A.

LOODIANAH; 9TH MAY, 1828.

Sir,

In acknowledging the receipt of your letter of this date, returning to me Charges against Lieutenant Goldney, and the documents connected with them, I have to request you will do me the favor to state to Major Holbrow, that, as he has declined forwarding them, and as I consider it essentially necessary to the justification of my character as an Officer and a Gentleman, that charges should be preferred against Lieutenant Goldney without delay. I have adopted the only alternative left me of forwarding them direct to the Officer Commanding the Station, for transmission to Head-Quarters through the regular Channel.

To
LIEUT. MACDONALD,
Adjt. 4th Regiment N. I. }

I have, &c.,
W. Y. TORCKLER,
Quarter Master, 4th Regiment N. I.

No. 22. A.

LOODIANAH; 9TH MAY, 1828.

SIR,

I have the honor to request you will submit the accompanying charges against Lieutenant Goldney 4th Regiment N. I. to Lieutenant-Colonel Stewart Commanding the Station, for transmission to Head-quarters through the prescribed channel together with the Documents connected with them, Major Holbrow having declined forwarding them.

To

LIEUT. MACDONALD,
Station Staff, Loodianah.

}
}

I have &c.,

W. Y. TORCKLER,
Lieut. Quarter Master, 4th Regt. N. I.

No. 489.

No. 23. A.

LOODIANAH; 10th MAY, 1828.

SIR,

I am directed by Major Holbrow Commanding the Regiment to forward to you the accompanying copy of Lieutenant-Colonel Stewart's decision on the subject of the reference connected with the correspondence between you and Lieutenant Goldney, and to request an early intimation of your determination in consequence.

To

LIEUT. TORCKLER,
4th Regiment N. I.

}
}

I have &c.

A. R. MACDONALD,
Lieutenant Adjutant, 4th Regiment N. I.

No. 122.

No. 24. A.

LOODIANAH; 9TH MAY, 1828.

SIR,

1st I am directed by Lieut. Colonel Stewart to acknowledge the receipt of your letter No. 487, forwarding copies of a correspondence between Lieutenants Torckler, and Goldney, of the Regiment under your Command.

2nd. Lieutenant Colonel Stewart approves of your judicious conduct in the steps you have taken in this unpleasant affair.

3rd. Had Lieutenant Goldney's statement been received previous to your decision it is probable that you would have adopted a different line of conduct, and perhaps insisted on the whole of the correspondence being mutually withdrawn; but as your opinion on the subject had been passed and recorded before you received Lieutenant Goldney's statement, I do not see what other line of conduct you could have pursued.

4th Such being Lieutenant Colonel Stewart's opinion, I have it in command from him to express his regret that Lieutenant Goldney should so far have lost sight of the deference due to his commanding Officer as not to have at once submitted to his judgment; considering however that the whole of this unfortu-

mate business has evidently arisen from private animosity and that neither of the parties are blameless, and that an exposure by its being submitted to higher authority can be creditable to neither of the officers concerned, Lieutenant-Colonel Stewart recommends that Lieutenants Torckler, and Goldney be requested to withdraw, the former his very improper letters, and the latter his equally objectionable Statement, and that the whole may be expunged from the records of the Adjutant's Office.

5th. Lieutenant Colonel Stewart, orders me further to observe, that he is very unwilling to trouble the Brigadier on such a subject, however, in the event of either, or both refusing to adopt this measure, he will refer the case to Brigadier Adams C. B. for his decision.

To
MAJOR HOLBROW,
Comdg. 4th N. I.

I have &c.
(Signed) A. R. MACDONALD,
Lieutenant, Station Staff.

No. 25. A. LOODIANAH; 10TH MAY, 1828.

SIR,

1. I have the honor to acknowledge the receipt of your letter of this day's date enclosing a Copy of a communication from the Station Staff Officer, in consequence of a reference made by Major Holbrow, Commanding the Regt.

2. Having already preferred charges against Lieutenant Goldney, which, in consequence of your having returned, I have forwarded direct to Lieutenant Colonel Stewart, Commanding the Station for transmission to Headquarters, I have only to observe, that I did expect, after it had been officially intimated to me that Lieutenant Goldney refused to withdraw his Statement, reflecting on my character as an Officer and a Gentleman, that he would have been placed under Arrest by Major Holbrow, Commanding, in which case, the very unpleasant duty of preferring charges against any Officer, would not have devolved upon me.

3. I request, that a Copy of this letter may be forwarded to Lieutenant Colonel Stewart, to accompany the charges and documents transmitted by me yesterday to the Station Staff.

To
LIEUT. MACDONALD,
Adj. 4th Regiment N. I.
LOODIANAH

I have the honor to be,

SIR,
Your Obedient Servant,
W. Y. TORCKLER,
Quarter Master, 4th Regt. N. I.

SERVICE.

No. 26. A. LOODIANAH; 10TH MAY, 1828.

SIR,

I have the honor to acknowledge the receipt of your letter of this date, enclosing a Copy of Lieutenant Colonel Stewart's decision upon the affair therein referred to,

XIV

Perceiving from the 4th Paragraph of that decision that the affair is now assuming the character of an appeal against Major Holbrow, instead of (as I intended) an exposure of Lieutenant Torckler's conduct towards me: and aware that if I persist in forwarding the business to the Head-Quarters of the Division, it must be accompanied by the recorded opinions of Major Holbrow and Lieutenant Colonel Stewart against my prosecuting it farther; I am ready to receive back the paper alluded to; at the same time I beg to state that I am actuated by respect for the Commanding Officer's opinion, and not by any apprehension of the ulterior consequences of a reference to Brigadier General Adams.

To

LIEUT. MACDONALD,
Adjutant, 4th Regt. N. I.

I have the honor to be,

SIR,

Your most obedient Servant,
(Signed) P. GOLDNEY,
Lt. 4th Regt. N. I.

No. 491.

No. 97. A.

LOODIANA; May, 10th 1828.

SIR,

I have to state for Lieutenant Colonel Stewart's information, that I have communicated his Sentiments, regarding the reference forwarded by me, to Lieutenant Torckler and Goldney.---I have now the pleasure to forward these Officers' determinations in consequence.

Lieutenant Goldney, the Commanding Officer will observe acquiesces respectfully in his decision, while Lieutenant Torckler takes no further notice of it, than to make his reply the medium of an attack upon me, stating that he did expect that I would have put Lieutenant Goldney in arrest, and preferred Charges against him, &c now so far is he from being warranted to form such an opinion that I distinctly told him, when he waited upon me on the evening of the 6th in presence of the Adjutant that in the event of Lieutenant Goldney's declining to follow my advice, I should then forward the whole to Lieutenant-Colonel Stewart Commanding the Station.

With reference to Charges which Lieutenant Torckler alludes to in the accompanying letter, I have only to observe that they were forwarded to me by that Officer yesterday morning, and immediately returned to him with a letter expressive of my surprise that he should forward documents of this kind, knowing as he did that the whole subject to which it referred was then under the notice of superior authority. The only effect which this appears to have had on Lieutenant Torckler, was to induce him to forward it direct to the Station Staff Officer.

I have however learnt not to be astonished at any act of disrespect which this Officer may evince towards those placed in authority over him, and I consider that I should be wanting to myself, and the situation which I hold, were I not here to state that Lieutenant Torckler's conduct towards me since I have assumed Command of the Regiment has been in many respects the opposite to that which I had a right to look for from him a Staff Officer in the Corps.

Lenity towards Lieutenant Torckler I consider mis-placed; the Commanding Officer knows how often it has been extended to him, and with how little avail - and I have in consequence intimated to him that the next time he may incur my censure, I shall deem it my duty to bring his conduct to the notice of His Excellency the Right Hon'ble the Commander in Chief.

To

LIEUT. MACDONALD,
Station Staff,

LOODIANAH.

(Signed)

I have, &c.,

J. HOLBROW, Major,
Comdg. 4th Regt. N. I.

No. 133.

No. 28. A.

LOODIANAH; 7TH MAY, 1828.

SIR,

1st. I regret exceedingly that I am under the necessity of troubling the Brigadier with a long correspondence on a matter that might have easily been settled had one of the parties concerned attended to the dictates of reason and common sense.

2d. Though I have reluctantly consented to forward charges preferred by Lieutenant Torckler against Lieutenant Goldney, I have merely done so as he alluded to them in a letter which he has sent in reply to a decision given by me in the matter in dispute between him and Lieut. Goldney.

3rd. On being acquainted with my opinion he had an opportunity given to him of withdrawing the said charges, however instead of acting that reasonable part, he makes not the smallest allusion to my decision conveyed to him through his Commanding Officer, although it became him to have stated his reasons for not consenting to be guided by my sentiments as therein expressed.

4th. As to the charges against Lieutenant Goldney, they cannot in my opinion be substantiated; indeed I cannot help considering them frivolous and they can do no good to the party by whom they are preferred, and can never I should imagine be brought before a Military tribunal.

5th. It is my duty, however in forwarding them to express my opinion of Lieutenant Goldney's general conduct, though he has erred in this instance in not paying implicit deference to the wishes of his immediate Commanding Officer, yet he has redeemed that error in some measure by the ready compliance with my wishes which he has evinced, although he was the person who requested that the subject should be laid before the Brigadier.

6th. I have had Lieutenant Goldney under my command for nearly 5 years, and during that time he has acted so as never to merit my disapprobation, so far from it that I do not know a more animated, zealous, and able young Officer keenly alive to every thing that concerns the credit of the corps.

7th. In conclusion I hope the Brigadier will approve of the endeavours I have made to settle this unpleasant affair, and that he will believe me when I say that, it is much against my inclination that he has been troubled with it.

To

CAPTAIN ANDERSON,
D. A. A. GENERAL,
SIRHIND DIVISION.

(Signed)

I have &c.

A. STEWART, Lt.-Col.

Comdg. at Loodianah.

No. 29. A.

MY DEAR TORCKLER,

Pray come to the Colonel's quarters, to hear read the General's decision on the subject of the reference from you.

Your's Sincerely,

A. R. MACDONALD.

No. 182.

No. 30. A.

KURNAUL; 14TH MAY, 1828.

SIR,

D. A. A. General's Office.

In acknowledging the receipt of your letter of the 9th Instant with its enclosures, I am desired to state--

That after an attentive perusal of the correspondence, Brigadier Adams, C. B. Commanding the Division, most fully concurs in the sentiments expressed by you in your recommendation that the letters and statement be mutually withdrawn, and the whole expunged from the records of the Adjutant's Office with the following explanation viz: 1st, the original cause of the whole of the disagreeable correspondence is evidently traced from Lieutenant Torckler's letter No. 1. to Lt. Goldney, and the reply of the latter thereto No. 2. It would have been better if Lieutenant Torckler under existing circumstances had not addressed Lieutenant Goldney on the subject, but had sought the information he required thro' the channel of the Commanding Officer, but as there was no expression of an irritating nature, Lieutenant Torckler was in the Commanding Officer's opinion entitled to a more courteous reply.

2d. As Lieutenant Goldney had determined to reply directly to Lieutenant Torckler, he should in courtesy have given the required information, or have mildly referred Lieutenant Torckler to the regular channel of communication (with him) instead of writing a reply couched throughout in expression of so irritating a nature.

3d. The Brigadier Commanding, being unwilling therefore to trouble His Excellency the Right Hon'ble the Commander in Chief with a voluminous Correspondence that promises to be by no means creditable to either of these Officers, desires, that Lieutenant Goldney be admonished on the impropriety of his reply to Lieutenant Torckler's letter No. 1, to which the irritable feelings which followed is to be evidently ascribed, and that your recommendation be fully complied with.

The whole of the Correspondence is horewith returned.

To
LIEUT.-COL. STEWART,
Commanding at Loodianah.

I have, &c.,
(Signed) D. D. ANDERSON,
Deputy Assistant Adjutant General.
(True Copy,)
A. R. MACDONALD,
Lieutenant, Station Staff.

No. 31 A.

LOODIANAH; 17TH MAY, 1828.

SIR,

I have the honor to acquaint you for the information of Brigadier Adams, C. B., Commanding the Division; that, I have communicated his sentiments as expressed in your letter No. 182, to Lieutenants Torckler and Goldney, on the subject of the reference made by the former Officer, who has now agreed without the least hesitation to abide by the Brigadier's decision.

2d. Agreeable to his instructions, I have directed the whole of the correspondence to be expunged from the records of the Adjutant's Office, 4th Regt.

To

Captain ANDERSON,
Dy. Asst. Adjt. General,
SIRHIND DIVISION.

}

I have, &c.,

(Signed) A. STEWART, Lieut.-Col.

Commanding at LOODIANAH.

No. 32. A.

LOODIANAH; 23d MAY, 1828.

SIR,

1. I have the honor to request, you will submit the following particulars to the consideration of Brigadier Adams, C. B., Commanding the Sirhind Division. But first I would wish to assure the Brigadier Commanding that had his decision, as set forth in your letter of the 14th Instant, to the address of Lieutenant-Colonel Stewart, Commanding the Station, been carried into full effect, I must have felt completely satisfied, nor should have had occasion to trouble the Brigadier again on this subject which I now though reluctantly feel myself under the necessity of doing.

2. In conformity to Orders received, I did myself the honor of attending at the Quarters of Lieutenant-Col. Stewart on the 16th Current, when (the Station Staff Officer and Lieutenant Goldney being the only persons present) he read to me your letter of the 14th Instant, aforesaid, conveying the opinion and decision of the Brigadier Commanding on the unpleasant difference between myself and Lieutenant Goldney, which I thought it my duty to bring to his notice. I did express myself perfectly satisfied with the General's decision, but under the impression that the injunctions contained in the 1st and 3rd Paragraphs of this letter would at that time (or at least before the present date) have been strictly and fully observed: the passages I refer to are as follow: 1, "That after an attentive perusal of the correspondence, Brigadier Adams, C. B. Commanding the Division most fully concurs in the sentiments expressed by you in your recommendation that the letters and statement be mutually withdrawn" &c.

3. "The Brigadier Commanding &c. &c., desires, &c. and that your recommendation be fully complied with."

4. On the 21st Instant seeing no probability of the correspondence being withdrawn, I waited on Lieutenant-Colonel Stewart, to express to him my desire of complying with the Brigadier's wishes on that head (and which I should

most willingly have done on the 16th Inst. had such been desired of me) for I had remained in expectation that Lieutenant Goldney being the aggressor would have made the first proffer to withdraw his improper note, to which the irritable feelings that followed have been so justly ascribed, and in particular, the Copy of his offensive public Statement, conveyed to me by him in a private manner and which with all their irritating effects on my feelings still remain in my possession. I think it necessary to add, that Lieutenant-Colonel Stewart observed in reply "that it was an over-sight of Lt. Macdonald's (the Station Staff Officer) & that he would speak to him." However up to this moment things remain as they were, the correspondence has not been withdrawn from either of the parties though it may have been expunged from the records of the Adjutant's Office.

5. I have also the honor to attach a Copy of a Letter from the Adjutant of the Regiment to my address dated the 5th May 1823, which was read to me by Lieutenant Macdonald the Adjutant, by order of Major Holbrow Commanding the Regiment, at his Quarters; himself, with Captain Wilton, and Lieutenant Goldney being present, which seems to my understanding to be couched in terms much in favour of Lieutenant Goldney, but the concluding reflection "while you avoid the possibility of further discussion &c." particularly seems to convey an insinuation by which I cannot but conceive myself much aggrieved, and is of such a nature, that I humbly beg to submit it to the more special consideration, and superior judgment of the Brigadier Commanding, since in that instance, I was solely actuated by a sense of my duty in my situation of an Officer.

To CAPTAIN D. ANDERSON,
Depty. Asst. Adjt. General,
Sirhind Division,
Kurnaul.

I have, &c.,
W. Y. TORCKLER,
Quarter Master,
4th Regiment N. I.

No. 148.

No. 33. A.

LOODIANAH: 24TH MAY, 1828.

Sir,

The accompanying letters to your address from Lieutenant Torckler of the 4th Regiment N. I. were received by me last night through the channel of the Officer Commanding that Corps.

2nd. I should most probably have declined forwarding them again, and troubling Brigadier Adams on a subject, which I considered completely settled, had not Lieutenant Torckler in his first paragraph made some rather uncalled for remarks upon the mode in which I carried the Brigadier's instruction into effect.

3rd. On receipt of your letter No. 182, of the 4th current. I ordered the attendance of Lieutenant Torckler and Goldney at my quarters, and in the presence of the Station Staff Officer, read to them the Brigadier's Statements on the subject of their difference, with which both those two Officers expressed themselves satisfied.

4th. I must observe that this mode of personally communicating the Brigadier's censure upon Lieutenant Goldney's conduct, was adopted by me from

a principle of fairness towards Lieutenant Torckler, as he (Lieut. Torckler) had previously been reprimanded in Lieutenant Goldney's presence by the Officer Commanding his corps.

5th. Both parties having expressed their satisfaction with the Brigadier's decision, I directed the whole of the correspondence to be expunged from the records of the Adjutant's Office, 4th Regiment N. I. and certainly considered the affair as set at rest, looking as I did upon the ceremony of these Officers mutually returning their letters to the station staff Officer for the purpose of being destroyed, as every end of which was attained by their expressed acquiescence in Brigadier Adams decision.

6th. In conclusion I deem it quite unnecessary for me to make a single comment upon the sense of propriety, or of a respect for those in authority over him, evinced by Lieutenant Torckler in again intruding upon Brigadier Adams notice, the copy of Major Holbrow's letter No. 482, a letter which had already together with the other papers, been submitted for his, the Brigadier's consideration, and by him returned with the whole correspondence for the purpose of being expunged from the Regimental records of the 4th N. I. which has been done, the copy now forwarded by Lieutenant Torckler being a transcript from one originally furnished to that Officer by Major Holbrow at his own (Lieut. Torckler's) request.

To

CAPT. ANDERSON,
D. A. Adj. Genl.
Sirhind Division.

No. 34. A.

(Signed)

I have, &c.,

A. STEWART, Lieut.-Col
Comdg. at Leodonianah.

MY DEAR TORCKLER,

Brigadier Adam's reply, to your letter of the 23d, has arrived; the Colonel requests your attendance at his House, to hear it read---

Your's Truly,
A. R. MACDONALD.

No. 35. A.

MY DEAR TORCKLER,

The Colonel thinks, that, as the whole affair is settled and any thing to be expunged, you ought not to ask for a Copy. The original will remain in the Office, in the event of any ulterior proceedings.

Your's Truly,
A. R. MACDONALD.

No. 36. A.

MY DEAR MACDONALD,

As it appears by your note, that ulterior proceedings depend on events, and as you state, the Original is to remain in your Office as a record, this renders it of the utmost importance, that I should clearly understand

(XX)

General Adams opinion, which I was too much agitated to attend to, whilst the Colonel was reading it. With a view therefore to prevent all future misunderstanding, with reference to this affair, which appears still unsettled, I request the Colonel's permission for me to be allowed to take a Copy of the General's decision. I write in this way, to prevent the necessity of making a public application for it.

Your's Sincerely,
W. Y. TORCKLER.

No. 37. A.

MY DEAR TORCKLER,

I will communicate the contents of your note to the Colonel. I do not contemplate the possibility of any thing further taking place; the Colonel in his former note said, that you might if you chose, come and peruse the General's letter at my Office, but I know that he dislikes giving Copies of papers out of the Office.

Your's Truly,
A. R. MACDONALD.

No 38. A.

LOODIANAH; 28TH MAY, 1828.

SIR,

1st. With reference to the subject relating to which I had the honor of attending at Lieutenant-Colonel Stewart's quarters this morning, I have to request you will submit to the Commanding Officer, my desire to be informed whether I am to consider the instructions given me on that occasion, viz: "to send the letters and Statement in my possession to the Station Staff Office, to be destroyed" as the positive orders either of the Brigadier Commanding the Division or of the Lieutenant-Colonel Commanding the Station; if so, in due obedience to authority, I shall as an Officer lose no time in doing so.

2d. But as the injunctions of the Brigadier Commanding, that "the Correspondence and Statement should be *mutually* withdrawn," have not been, as I conceive complied with, feeling myself aggrieved, I solicit permission to apply for redress to higher authority; it is therefore of great importance to me that the original documents should remain in my possession for that purpose.

3rd. I have to request, you will favor me with an early acknowledgment of the receipt of this letter, and shall feel obliged by your furnishing me with a copy of the Deputy Assistant Adjutant General's letter, this day read to me.

To
LIEUT. MACDONALD,
Station Staff,
Loodianah.

I have, &c.,
W. Y. TORCKLER, Lt.
4th Regt. N. I.

No. 158.

No. 39. A.

LOODIANAH; 28TH MAY, 1828.

SIR,

1st. I have laid your letter just received before the Commanding Officer.
2d. Agreeable to the instructions contained in the Deputy Assistant Adjutant General's letter, this day read to me.

Adjutant General's letter read to you this morning, you are directed to send the Correspondence alluded to, to this Office for the purpose therein mentioned

3d A Copy of the Deputy Assistant Adjutant General's letter will be furnished to you with all convenient expedition.

To
LIEUT TORCKLER,
4th Regiment N. I }

I have, &c,
A R MACDONALD,
Lieutenant, Station Staff.

No 203.

No. 40. A.

Deputy Assistant Adjutant General's Office,

SIR,

Kurnaul; 26th May, 1828.

Having submitted your letter of the 24th Instant, with Lieut Torckler's therein enclosed, to the Commanding Officer of the Division I am instructed to reply thereto, and to express the displeasure and surprise of Brigadier General Adams, C. B., after being made acquainted, that Lieutenant Torckler had conformed to his decision, as conveyed in my letter of the 14th Instant, to have a document virtually nullified, again submitted for further consideration

You will be good enough to send for Lieutenant Torckler, and convey these the Commanding Officer's sentiments to him.

You will also be kind enough to direct the Correspondence alluded to in Lieutenant Torckler's letter of the 23d Inst to be sent to the Staff Officer at Loodianah, who will be directed to destroy the same on receipt; after which the matter is to be considered at an end.

To
LIEUT-COL STEWART,
Comdg. at Loodianah. }

(Signed)

I have, &c,
D D ANDERSON,
Deputy Assistant Adjutant General.

(True Copy,)

A. R MACDONALD,

Lieutenant, Station Staff.

No. 41. A.

LOODIANAH; 29TH MAY, 1828.

SIR,

1. In obedience to the pre-emptory Order of Lieutenant-Colonel Stewart, Commanding the Station, as intimated to me in your letter of yesterday's date, no alternative, but that of subjecting myself to Arrest (should I disobey such Order) being left me, I herewith send you the letters alluded to (Nos 2, 8, and 10.) though altogether against my own inclinations; for had the option been left me, I should not have given them up to any but the writers of them, who, it seems to me alone can legally require their restoration: I therefore feel I have no reason to be satisfied with this novel mode of terminating an affair, which surely is any thing but mutual.

2. Should however these Documents, (my own exclusive property thus taken from me by compulsion) be destroyed contrary to my wishes, after having already solicited permission to apply for redress to higher authority, and I hear nothing farther from you to the contrary, I shall consider myself then justified in addressing His Excellency the Right Honorable the Commander-in-Chief, by Memorial, through the Adjutant General of the Army, direct.

3. I have to request, that I may be allowed access to all the public letters in your Office, connected with this affair, for the purpose of taking Copies of them.

To
 LIEUT. MACDONALD,
Station Staff,
 LOODIANAH.

I have, &c.,

W. Y. TORCKLER, *Lieut.*
4th Regiment N. I.

No. 162.

No. 42. A.

LOODIANAH; 29TH MAY, 1828.

SIR,

With reference to the last Paragraph of your letter this-day received, the Commanding Officer declines granting the Copies of letters required by you, as the matter to which they allude is now at an end; he therefore desires that you will refrain from any further Correspondence with him on the subject.

2. Lieutenant-Colonel Stewart abstains from any remark upon the very extraordinary style and tenor of the letter which you thought proper to send to my address this morning---having forwarded it together with the letters received from you yesterday, to the Brigadier General, Commanding the Division.

To
 LIEUT. TORCKLER,
4th Regiment N. I.
 LOODIANAH.

I have, &c.,

A. R. MACDONALD,
Lieutenant, Station Staff.

No. 161.

No. 43. A.

LOODIANAH; 29TH MAY, 1828.

SIR,-

I humbly submit for the consideration of Brigadier General Adams, C. B. whether in the execution of his orders I am to be subjected to the receipt of letters, such as the accompanying one No. 3, from Lieutenant Torckler.

To CAPT. ANDERSON,
D. A. Adj. Genl.
Sirhind Division.

I have, &c.,

A. STEWART, *Lieut.-Col.*
Commanding at Loodianah.

No. 44. A.

LOODIANAH; 31ST MAY, 1828.

SIR,

1. Upon reference to my letter of the 29th Instant, to your address, in the cooler moments of reflection, I feel convinced, that there is in that letter, which

was written under the impulse of the moment, and feelings smarting from the imagined sense of wrong in having my papers taken from me) a degree of informality in style, and want of propriety, which I now much regret, and therefore I am solicitous to apologize for the same. I am extremely anxious that my contrition in this respect, should be made known to the Commanding Officer and to the Brigadier Commanding the Division, whose displeasure on that account, I would by no means wish to incur.

2. I very much regret, that this affair has given so much trouble to the Brigadier General Commanding, as well as to the Officer Commanding the Station, but I hope I may be permitted to say that this has arisen from my considering, that I was constrained as an Officer to look upon it in a public, rather than a private point of view.

3. I have therefore to solicit, as a favour, that Lieutenant-Colonel Stewart will indulge me so far, as to allow this letter to be transmitted to the Headquarters of the Division.

To

LIEUT. MACDONALD,
Station Staff, Loodianah.

}

I have, &c.,
W. Y. TORCKLER,
Lieut. 4th Regt. N. I.

No. 164.

No 45. A.

LOODIANAH; 31ST MAY, 1828.

SIR,

Herewith I have the honor to transmit a letter this-day received from Lt. Torekler 4th Regiment Native Infantry, which I hope the Brigadier General-Commanding, will excuse my forwarding.

To

CAPTAIN ANDERSON,
D. A. A. GENERAL,
SIRHIND DIVISION.

}

I have, &c.,
(Signed) A. STEWART, Lt.-Col.
Comdg. at Loodianah.

No. 491.

No. 46. A.

LOODIANAH; STATION STAFF OFFICE, JUNE 2D, 1828.

SIR,

By command of Lieutenant-Colonel Stewart, I have the honor to forward to you an extract from a letter this-morning received from the Deputy Assistant Adjutant General of the Division, with reference to which a reply is desired from you with the least possible delay, so as to enable the Commanding Officer to forward the same by this day's Dawk for the information of the Brigadier General Commanding the Division.

To

LIEUT. TORCKLER,
4th Regiment, N. I.

}

I have, &c.,
A. R. MACDONALD,
Lieut. Station Staff.

(XXIV.)

No. 209.

Deputy Assistant Adjutant General's Office;

No. 47. A.

KURNAUL; 31st MAY, 1828.

SIR,

I have laid before the Brigadier General your letter of the 29th Instant, (No. 161) together with letters from Lieutenant Torckler, Numbered. 1, 2, and 3.

I am directed to inform you, that Brigadier General Adams, C. B., has observed such a spirit of litigation throughout the whole of the Correspondence on the part of Lieutenant Torckler, that he has come to the determination, unless that Officer withdraws his highly improper letter No. 3, and dated the 29th Inst., and also makes you a suitable apology, of submitting the whole of the matter to His Excellency the Right Honorable the Commander-in-Chief with a recommendation, that Lieutenant Torckler may be removed from his Staff appointment.

(True Extract,)

A. R. MACDONALD,
Lieut., Station Staff.

No. 209.

Deputy Assistant Adjutant General's Office,

No. 48. A.

KURNAUL; 31st MAY, 1828.

SIR,

I have laid before the Brigadier General your letter of the 27th Ultimo. No. 161. together with letters from Lieutenant Torckler, Numbered 1-2-&-3.

I am directed to inform you that Brigadier General Adams, C. B. has observed such a spirit of litigation throughout the whole of the Correspondence on the part of Lieutenant Torckler that he has come to the determination unless that Officer withdraws his highly improper letter, No. 3, and dated the 28th Inst., and also makes you a suitable apology of submitting the whole of the matter to His Excellency the Right Hon'ble the Commander in Chief, with a recommendation that Lieutenant Torckler may be removed from his Staff situation.

You will therefore in the event of that Officer's declining to withdraw his letter No. 3, and apologizing for the improper tone of it, make out a Statement of the affair from first to last, which together with a Copy of the Correspondence from beginning to end you will forward to me, in order that the same may be transmitted to Head-Quarters for decision.

Should the Correspondence have been destroyed, you will kindly make out a Statement and forward it at your earliest convenience.

To
LIEUT.-COL. STEWART,
Commanding at Loodianah. }

I have, &c.;
(Signed) D. D. ANDERSON,
Deputy Assistant Adjutant General.

No. 49. A.

LOODIANAH ; 20 JUNE, 1828.

SIR,

1st. I have the honor to acknowledge the receipt of your letter of this day's date, enclosing an extract of a letter from the Deputy Assistant Adjutant General of the Division.

2d. In obedience to the instructions therein contained, I have the honor to solicit Brigadier General Adams permission to withdraw my letter dated the 29th Ultimo to your address, and also to apologize for whatever may be objectionable or informal in the style of that letter to the Brigadier General Commanding the Division, and to Lieutenant-Colonel Stewart, Commanding the Station.

3d. Adverting to my letter of the 31st Ultimo, in which I had the honor of expressing my contrition and of making voluntarily a similar apology, previously to my possibly being aware of the Brigadier's sentiments, I earnestly hope to receive the assurance of his entire satisfaction, as well as that of Lieutenant Colonel Stewart.

To

LIEUT. MACDONALD,
Station Staff.
Loodianah,

}

I have, &c.,
W. Y. TORCKLER, LIEUT.
Quarter Master,
4th Regiment N. I.

No. 169.

No. 50. A.

LOODIANAH ; 20 JUNE, 1828.

SIR,

Herewith I have the honor to forward a letter from Lieutenant Torckler 4th Regiment, conveying that Officer's acquiescence in the alternative given him by Brigadier General Adams, C. B. of apologizing and withdrawing his obnoxious letter of the 29th Ultimo, or of standing the consequence of refusing to do so.

To CAPTAIN ANDERSON,
Depty. Asst. Adjt. Genl.
Sirhind Division.

}

(Signed)

I have, &c.,
A. STEWART, LIEUT.-COL.
Comdg. at Loodianah:

Station Staff Office ;

No. 51.

LOODIANAH ; 7TH JUNE, 1828.

SIR,

I am directed by Lieutenant Colonel Stewart, to send you the accompanying Copy of a letter from the Deputy Assistant Adjutant General of the Division, acknowledging the receipt of your letter withdrawing that of the 29th Ultimo.

Lieutenant-Colonel Stewart trusts, that the advice inculcated by the Brigadier General in letter No. 214, will make a strong impression and have a due influence on your future conduct.

Herewith I have the honor to return your letter of the 29th Ultimo.

To

W. Y. TORCKLER, LIEUT.
4th Regiment N. I.

}

I have, &c.,
LIEUT. A. R. MACDONALD,
Lieut. Station Staff.

Deputy Assistant Adjutant General's Office ;

No. 52. A.

KURNAUL ; 4TH JUNE, 1823.

SIR,

Your letter of the 31st Ultimo, has been submitted to Brigadier General Adams, C. B., Commanding the Division, who has directed me to state in reply, that he is happy Lieutenant Torckler has attended to the substance of my letter No. 209, and dated the 31st Ultimo.

The Commanding Officer has further desired me to say that he recommends Lieutenant Torckler (as he values his future welfare) to endeavour by an assiduous and zealous discharge of the duties of his Office to gain the confidence of those placed in Command, which the General is afraid must in some degree have been shaken by the recent troublesome Correspondence which has just been brought to a close.----

To

LIEUT.-COL. A. STEWART,
Commanding at
LOODIANAH.

I have, &c.,

(Signed) D. D. ANDERSON,

Dy. Asst. Adjt. General,

(True Copy.)

A. R. MACDONALD,

Lieutenant, Station Staff.

Correspondence, B.

No 1. B. Connected with Lieutenant Torckler's disputed admission into the Mess of the 4th Regiment Native Infantry.

— MY DEAR WILTON,

I understand there is to be a Mess Meeting on the subject of the offensive remark in the Newspaper, which I now send you with the request, that, you will submit this letter, together with it to the Officers, and I trust, that though some from whose rank, seniority, and particular situations, it might have been expected, did not evince a proper sense of delicacy in not suppressing this gross, wanton, and ungentlemanly attack on our feelings, other Gentlemen will be found more able and willing to appreciate them, and render me such justice as is in their power ; of course I expect, they will point out the individual who has chosen so unadvisedly to make the Mess Newspaper the vehicle of taunting and offensive reflections on one of their own Corps.

To

CAPTAIN WILTON,
President Mess Committee,
4th Regiment Native Infantry.

Your's Sincerely,

5th Feb. W. Y. TORCKLER,

Memorandum of a passage in a letter published in the Bengal Hurkaru, and the remark of an anonymous writer.

" I recollect having seen him about thirty years since at Mr. William's " Auction Rooms, at the corner of Rada Bazar (*where Torckler's Tea Ware-House* " *was formerly.* "

NOTE BY THE EDITOR,

We are very much obliged by C. S's interesting letter, Ed. * " *AND so AM I.* "

(Signed)

C. S.

No. 2. B.

The Officers of the Mess having had laid before them a letter from Lieutenant Torckler, bringing to their notice, a remark offensive to his feelings made in the Mess Newspaper, express their surprise and regret that ~~any individual~~ should have ventured to make their public paper the medium of an indelicate and unwarrantable attack on the feelings of an Officer of the Regiment.

5TH FEBRUARY,

1827.

G. R. WILTON, Captain,
Mess Manager,
4th Regt. N. I.

No 3. B.

LOODIANAH; 12TH FEBRUARY, 1828.

Gentlemen,

In expressing to you my acknowledgements for the collective opinions of the Mess in reference to a certain remark openly circulated in the Mess Newspaper, I regret to perceive that this remark has not been openly disavowed by each individual of the Regiment.

I am free to confess that, although it now admits of a question whether I have any right to demand a disavowal from every individual of the Regiment, of what has been designated by yourselves as "indelicate and unwarrantable," still I did hope, that, of Brother Officers of the same Corps, each individual would have voluntarily offered to me a frank and public disavowal of what all have collectively designated, as "indelicate and unwarrantable."

Having submitted the circumstance for the consideration of the Members of the Mess, I am necessarily precluded from acting on my own opinion, but as the remark in question has not been publicly disavowed, it seems to me, that, unless some rule is passed by the Mess to prevent the recurrence of similar remarks and their perpetration among the Officers of the Station at large, that it is in the power of any mischievous person to wound the feelings of any member of our Society, by scribbling indelicate, unwarrantable and offensive observations in the columns of a Paper or the margin of a Book.*

I therefore submit to my Brother Officers that, on any future occasion, when the Officers of the Mess are of opinion that indelicate and unwarrantable remarks and offensive to the feelings of any Officer of the Regiment, have been made and publicly circulated, that each individual Officer of the Regiment be called on by the Mess, to disavow on honor the offensive remarks, and in the event of a refusal to conform to this Rule, the individual so refusing be considered as the author, and be expelled the Mess accordingly.

* There being a Book Society in the Regiment.

As my Brother Officers have been appealed to, I claim their interference, not only as having had unprovoked cause to do so, but to prevent a recurrence of conduct subversive of all confidence and mutual good feeling amongst the members of any Society.

To
THE OFFICERS OF THE MESS,
4th Regiment N. I. }

I have, &c.,
W. Y. TORCKLER,
4th Regiment Native Infantry,
Honorary Member.

No. 4. B.

LOODIANAH; 14TH FEBRUARY, 1828.

Sir,

Agreeably with the request of the Officers of the Mess 4th Regiment; I have the pleasure to enclose a Copy of the Resolutions made by them at a Meeting held this day.

To
LIEUTENANT TORCKLER,
4th Regiment N. I. }

(Signed) I have, &c.,
GEO. ROBT. WILTON, CAPT.
President Mess Committee,
4th Regiment.

At a Meeting of the the Members of the Mess held on the 14th February, read a letter from Lieutenant Torckler, dated 12th February, addressed to the Officers of the Mess 4th Regiment---also his letter of the 5th February, to Captain Wilton, President Mess Committee, and the resolution passed by the Mess on the 5th February, and forwarded to Lieutenant Torckler on the 6th February.

RESOLVED UNANIMOUSLY.

1st. That the Officers of the Mess regret that their resolution of the 5th February, regarding the remark in the Mess News paper has not proved satisfactory to Lieutenant Torckler's feelings.

2d. With reference to the rule proposed to be adopted by Lieutenant Torckler in his letter of the 12th February, for the purpose of preventing the recurrence of any such observations in future, the Officers of the Mess do not contemplate the probability of any thing of the kind again taking place, and therefore do not deem any further precautionary measures on that subject necessary. Should they, however be disappointed in this expectation, they will then adopt such steps as may to them appear best calculated to mark their sense of such conduct.

3d. Captain Wilton is requested to forward a Copy of the above resolutions to Lieutenant Torckler.

(A true Copy)

LOODIANAH;
14TH FEBRUARY, 1828. }

(Signed) GEO. ROBERT WILTON, CAPT.
President, Mess Committee,
4th Regiment Native Infantry.

No. 5. B.

Lieutenant Torckler has had the honor to receive a Copy of the resolutions passed at a Meeting of the Members of the Mess on the 14th current. Lieut. Torckler hopes the Officers will not be disappointed in their expectations, though it is not at all probable that he will ever be induced again to appeal to their interference.

LOONIANAH ; 20TH FEBRUARY, 1828.

To

(A true Copy).

THE OFFICERS OF THE MESS, }
4th Regiment N. I. }

W. Y. TORCKLER,
4th Regiment Native Infantry.

SUPPLEMENTARY STATEMENT.

The Mess Newspaper containing the offensive remark, in roman characters, at the foot of the Editor's note, interlined & marked with asterisks, as shown in the Memorandum annexed to letter, No. 1. was sent to me by Captain Caley, (then second in Command) on the 5th February, 1828, who informed me that he had received it in that state from Major Holbrow, (then Commanding the Regiment) who also admitted to me, that he had observed the remark in the paper, before he forwarded it to Captain Caley, and expressed his opinion on the subject, that, "it was very wrong."

Calculated as, any one must perceive, it was, to wound and irritate not only mine, but a young Sister's feelings, then residing under my protection, and perhaps to lead to more serious consequences, I cannot conjecture with what good motives the paper was sent to us, or why its further circulation was not suppressed unless with a most unworthy object in view.

Being unsuccessful in my endeavours privately to trace the author of an implied affront of so public, and unprovoked a description, and being given to understand by the Adjutant, at the desire of Lieutenant-Colonel Stewart, then Commanding the Station, that it was in contemplation to call a Mess Meeting. I was led to expect from the warm terms in which the majority of my Brother Officers had expressed their sense of the conduct of the unknown writer, that each individual of them would voluntarily have offered me a public disavowal of it, and have rendered me the fullest satisfaction, or at least have taken some precautionary measures for the future, whilst a possibility existed of a recurrence of similar aggressions.

This led to my Correspondence with the Mess, which was commenced and terminated as already detailed. Perhaps my regard to the Memory of a deceased unfortunate Father, highly and deservedly esteemed by all who knew him when living, and the warmth of my own excited feelings led me to view too seriously a matter, which might be deemed by some of a trivial nature; but on taking the opinion of my Brother Officers individually it was pronounced by the generality of them, as most "ungentlemanly and indelicate."

N. B. After a contemptuous silence of seven Months, the subject is revived by the Officers of the Mess.

W. Y. T.

(XXX)

N. B. On the 24th September, in consequence of my Sister's late Marriage, leaving me no plea for remaining any longer an Honorary Member, I intimated to Captain Wilton my intention to join the Mess, as a permanent Member on the 1st Octr. to which, until the next day he offered no objection, but merely said he would mention it to the other Members of the Mess. W. Y. T.

No. 6. B. LOODIANAH ; 25TH SEPT., 1828.

SIR,

I have the honor to enclose you two resolutions passed by the Mess this day, and to request a reply at your earliest convenience.

To

LIEUT. TORCKLER,
4th Regiment N. I.

I am, &c.,

G. R. WILTON Captain,
Mess Manager.

VIDE No. 5. B. } N. B. I beg to enclose a Copy of the letter you
No. 7. B. } addressed to the Mess on the 20th February last.

At a Meeting of the Members of the Mess assembled at Loodianah on the 25th day of September.

RESOLVED.

1st. That the letter of Lieutenant Torckler, dated the 20th February be read. Read accordingly.

2. That the Officers of the Mess, coupling the sentiments expressed in Lieutenant Torckler's letter of the 20th February last, with the then apparently improbable circumstance of his wishing to become a permanent member of the Mess, did not consider it necessary to require him at that time to withdraw it, but as Lieutenant Torckler has now intimated his wish to join the Mess, they are of opinion that he should be applied to withdraw the letter in question as an indispensable prelude to a compliance with his request to become a Member being submitted for the consideration of the Officers of the Mess.

(A true Extract)

G. R. WILTON,
Mess Manager.

No. 8. B.

LOODIAAH ; 25TH SEPT., 1828.

SIR,

I am directed by the Members of the Mess to request that you will reply to the resolutions passed by them this day--the meeting will not be dissolved until $\frac{1}{2}$ past 6 o'clock. Should however no reply in writing be received by that time, the Commanding Officer will be requested to sanction a Meeting of the Mess to be held immediately after Parade to-morrow morning.

To

LIEUT. TORCKLER,
4th Regiment N. I.
LOODIANAH.

I am, &c.,

(Signed)

GEO. ROBT. WILTON, CAPT.

Mess Manager.

No. 9. B.

LOODIANAH ; 26TH SEPT., 1829.

Sir,

I have the honor to enclose herewith an extract of Resolutions passed by the Mess, this day.

To

LIEUT. TORCKLER,

4th Regiment.

(Signed)

I am, &c.,
G. R. WILTON, CAPT.

Mess Manager.

No. 10. B.

RESOLVED :

1st.---That the Officers of the Mess having been acquainted by the President, that no answer has been received from Lieutenant Torckler to their two communications to that Officer, express their regret and surprize that an Officer of the Regiment,* after repeatedly applying to them to give their opinion upon his private concerns, should treat their resolutions with such indifference and contempt, and do decide that no notice be taken of any communication which that Officer may wish to intrude upon them in future.

2d.---Lieutenant Torckler will understand from the above resolution that he is no longer an Honorary Member of the Mess.

(True Extract,)

(Signed)

G. R. WILTON, CAPT.

Mess Manager.

No. 11. B.

LOODIANAH ; 26TH SEPT. 1829.

Sir,

Having waited yesterday, on Major Holbrow Commanding the Regiment and submitted to him certain notes received from Captain Wilton in consequence of my having verbally intimated to that Officer, as Mess Manager, my intention to become a permanent Member of the Regimental Mess, and Major Holbrow having declined to receive the papers except through the proper channel, I herewith enclose copies of them, as well as of a third communication received this morning for submission to him through you.

2. It is not for me to presume to offer an opinion on the attempt made by Captain Wilton to revert to unpleasant circumstances which transpired in February last, in consequence of remarks, offensive to my feelings, made in the columns of a Mess Newspaper, and publicly circulated amongst the Officers; it is sufficiently ~~well known~~ the lapse of time, which has been allowed to intervene, precludes me from now recurring to a subject, that the Officers of the Mess have allowed to lie dormant until the 25th Instant : as I was an Honorary Member of the Mess on the 20th February, had the Officers then been of opinion that my note was improper, it is manifest, that it should at that time, have been brought to the notice of the Commanding Officer, and not now be made a pretext for deterring me from becoming a permanent Member of the Regimental Mess.

* This assertion is not correct, as they have only been applied to in one instance, on the subject of the very transaction now reverted to by themselves, to which Lieutenant Torckler's note of the 20th February last alludes. On a subsequent recent occasion the meeting of the Officers of the Mess was not sanctioned by the Commanding Officer and consequently the circumstance was not submitted to their opinion collectively.

W. Y. TORCKLER, Lieut.

The Brigadier General however trusting, that Lieut. Torckler will see the great impropriety of his conduct has directed me to return the correspondence with his strongest recommendation that Lieut. Torckler solicits your permission to recal the letter in question and to make a most ample apology to you for the unjustifiable insinuations which pervades the whole of it ; on his doing so and your being satisfied with the apology, the Brigadier General wishes the matter may be set at rest, but should he decline to do so, and be still desirous of intruding his letter on the Notice of His Excellency the Right Honorable the Commander-in-Chief, Brigadier General Adams C. B., recommends that you forward *direct* the whole of the correspondence to the address of the Adjutant General of the Army, for his Lordship's consideration, he being unwilling to do so, as before a reply can be received you will be beyond the Command of the Sirhind Division.

I am directed in conclusion to advert to that part of Lieut. Torckler's letter to my address in which he conceives a hostile feeling pervades the Generality of the Officers of the Corps towards him, the Brigadier General hardly conceives it possible that a set of British Officers could harbour a feeling of the kind without some cause; and that he therefore recommends Lieutenant Torckler should by a conciliating and courteous demeanour endeavour to regain the good opinion of his Brother Officers.

To MAJOR HOLBROW,
Comdg. 4th N. I.
CAMP.

I have, &c.,
D. D. ANDERSON,
Depty. Asst. Adjt. General.

No. 605.

No. 35 B.

CAMP DOODLA ; 22D SEPT., 1828.

SIR,

I am directed by Major Holbrow, Commanding; to forward to you the accompanying Copy of a letter to his address this day, received from the Headquarters of the Division; and to request an early intimation of your decision, with regard to the alternative submitted for your adoption.

W. Y. TORCKLER,
4th Regt. N. I.

I have, &c.,
A. R. MACDONALD, Lieut. Adjutant.

No. 36. B.

CAMP THANESSIR ; 24TH OCT., 1828.

SIR,

1. I have the honor to acknowledge the receipt of your public letter of the 22d Current, together with a copy of a letter from the Deputy Assistant Adjutant General of the Division, to the address of Major Holbrow, Commanding the Regiment, conveying Brigadier General Adams, C. B. decided disapprobation of my letter of the 13th Current submitted to him.

2. Although it is no palliation of my offence, that I have too easily credited and suffered myself to be misled by reports (which I must now consider

ther exaggerated or unfounded) regarding expressions and sentiments said to have been used by Major Holbrow as well as several other Officers of the Corps at various times, I think it fit to mention this as some excuse for what otherwise might appear unaccountable conduct, and that, had I not heard said, that an Officer of the Corps had actually seen the public letter reporting me "unfit for my situation and recommending my removal from it" I should not have persisted in forwarding my letter.

3. Perceiving now how much I have been labouring under erroneous notions, I feel no hesitation in candidly acknowledging my fault, and beg the Commanding Officer will not impute my delay in doing so to any reluctance on my part, but to the true cause, my unfortunate situation without a single friend in the Corps to advise me.

4. I lose no further time, in hastening to solicit Major Holbrow's permission to withdraw my obnoxious letter to the address of Captain Anderson, of the 13th Current, and to express to him my sincere contrition for the impropriety of my conduct in forwarding a paper containing insinuations which have been considered highly disrespectful and improper, and which I now find, were groundless: I beg to add, that I am extremely solicitous to apologize to Major Holbrow, Commanding the Regt., in the fullest, and most acceptable terms and manner and with his permission, will do myself the honor of waiting upon him, for the purpose of doing so in person, as it is my earnest desire by my future conduct to reinstate myself in his good opinion.

5. Having performed this, an indispensable part of my duty, it remains for me to assure the Commanding Officer, that I deeply regret having caused him so much trouble, as well as the circumstances which gave rise to this disagreeable Correspondence, and led to my present unfortunate disunion with the Officers of the Mess generally, and to intreat of Major Holbrow Commanding the Regiment, to intercede with them in my behalf that they will comply with my wish (formerly expressed) to withdraw the note which was considered objectionable and that they will allow the whole affair to be buried in Oblivion; as I am most earnestly desirous of being reconciled to them all; and, where any may conceive he has received personal cause of offence (which I have not designedly sought to offer any I am aware of) of proffering such explanation as is in my power.

To LIEUT. MACDONALD,
Adjutant, 4th Regt. N. I.
Camp Thaneysir.

I have, &c.,
W. Y. TORCKLER, Lieut.
4th Regiment N. I.

No. 1.

CAMP KURNARL; 26TH OCT., 1828.

Lieutenant Torckler presents his compliments to Lieutenant Goldney regrets extremely the misunderstanding that has existed between them for a length of time past, and should it be agreeable to Lieut. Goldney he will do himself the honor of calling upon him as this may be the last opportunity he may have of explaining matters, since Lieut. Goldney is shortly about to leave the Corps, and Lieut. Torckler is anxious to be reconciled to him ere he does so.

CAMP, KURNAUL;
26th OCTOBER, 1828.

(L.)

No. 2.

CAWNTORE; 8TH JAN., 1820.

The Deputy Judge Advocate having informed Lt. Torckler that the note of Lt. Goldney's in reply to the above proposal to call upon him, has been mislaid or lost; Lt. Torckler admits, that the purport of that note was, that Lt. Goldney being unwell on that day, would be happy to see him the ensuing morning.

No. 3. SIR,

KURNAUL; 26TH OCT.

On consideration I have thought it better to put you in possession of my sentiments on the subjects alluded to in your note of this morning. I have every wish to abide by Major Holbrow's recommendation of yesterday evening, and to encourage the general unanimity of the Officers of the Regt. but it is necessary that I should declare my feelings on this subject.

I did not certainly, expect to receive any overtures of the nature made by you, and altho' I am bound to feel obliged by your voluntarily coming forward to proffer an explanation and a reconciliation with me, yet it is impossible that an alienation (to use the mildest term) of nearly three years can be effaced in five minutes conversation.

Scarcely a fortnight now remains before I quit the Regt. for a considerable period, and that is so short a time that it is neither very probable nor of much consequence that an acquaintance should be cemented between us, but if on rejoining the Regt. I find that the harmony of my Brother Officers as a body has not been interrupted by your means, that your conduct has continued to justify the sincerity of your present declarations, I assure you that no remains of private pique shall interfere to prevent my being on such terms of intercourse and civility with you as the nature to apparent difference of our dispositions and pursuits may admit of.

These are my own, uninfluenced sentiments. Your already expressed wishes are perfectly sufficient for me; but if after perusing the above you still wish to communicate personally: if you will be good enough to name any third person, whose presence we can meet and avoid mutually all irritating topics, I cannot object to do so whenever you please.

To LIEUT. TORCKLER, }
4th Regt. N. I. }

Your's Obediently,
PHILIP GOLDNEY.

Correspondence, C.

Connected with leave of absence granted to Lieutenant Torckler to visit Allahabad.

SERVICE.

No. 1. C.

SULTANPORE; 13TH FEBRUARY, 1829.

SIR,

1. I am ordered by the Commanding Officer to desire that you will immediately return to the Head-quarters of the Regiment, your leave of absence having expired on the 8th Instant.

2. I have the honor to request that you will acknowledge the receipt of this letter.

To LIEUT. TORCKLER,
Intr. 4th Regiment N. I.
ALLAHABAD.

I am, &c.,

G. SALTER, LIEUT.
Acting Adjutant 4th Regiment N. I.

No. 2. C.

SULTANPORE ; 16TH FEBRUARY, 1829.

SIR,

1. In reply to your letter of the 13th Instant, to my address, to Allahabad, received since my return to this station, on the night of the same date, I take leave to state, that my leave of absence did not expire on the 8th as intimated therein, and since I perceived with regret, the failure of a verbal explanation which I sought to offer to Major Holbrow, Commanding the Regiment, on my return, it is my anxious desire to give a full and explicit one now, in writing, particularly, as I have understood, Major Holbrow expressed his intention even before my return of not granting me leave again, and as he has himself since intimated the same to me.

2. Although I left the Station by permission of Major Holbrow, Commanding the Regiment on Monday the 2nd with the express intention of returning by Monday the 9th Instant, yet I did not conceive, that my leave was limited to that period as I applied for leave for a "week or ten days" as Major Holbrow may recollect, and as his sole objection to my remaining at Allahabad, beyond the 8th arose from the expected arrival there of the Commander-in-Chief on that date, whom it was his particular injunction to me to avoid, I considered it was justified by His Excellency not arriving until the 11th Instant.

3. With this understanding, I did not think I was exceeding Major Holbrow's indulgence by prolonging my stay only till the 12th (by which date I should have returned but for an accidental delay that occurred in laying my dak) more especially, as, at the time of applying to Major Holbrow for leave, when I proposed doing so the Brigadier General in consequence of his expressing a doubt whether he was authorized in permitting me to visit a station out of the Division, where there was a superior Officer, I understood him to say he would not mind my being away even till the 14th provided, I was back by that date, else my absence must be noticed in the half monthly Report.

4. In consequence of what I have now related I regret I did not advert to the necessity of communicating by letter the cause of my detention at Allahabad beyond the 9th or to the possibility on to the other hand of my incurring the displeasure of the Commanding Officer by omitting to do so, though I totally disavow any intentional neglect of duty or respect to Major Holbrow as Commanding Officer, but I knew that had I written on the 8th the letter would only have arrived here on the 12th the same day with myself, and I felt persuaded that the serious illness of a near relative whom I went to visit at Allahabad, and whose life was for several days considered in imminent danger, only required to be explained in person to account satisfactorily for my prolonged stay.

To LIEUT. SALTER,
Adjt. 4th Regiment N. I.
SULTANPORE.

I have, &c.,
W. Y. TORCKLER,
Intr. & Qr. Mr. 4th Regt. N. I.

No. 709.

SERVICE.

No. 3. C.

SULTANPORE OUDE ; 17TH. FEB., 1829.

SIR,

1. In reply to your letter of yesterday's date, I am desired by the Commanding Officer to intimate to you that his opinion of the impropriety of your conduct in neglecting to inform him of your intention of being absent from the Corps until the 12th Instant, remains unchanged ; although the cause of your absence was sufficient to have warranted your prolonged stay at Allahabad, if you had paid Major Holbrow the compliment of apprizing him of your intention and soliciting his consent.

2. Had the communication required arrived even after you had rejoined the Head-quarters of the Regiment, still it would have satisfied the Commanding Officer that you had not treated him with wilful disrespect, as your silence on this and your conduct on a late occasion, wherein you set his authority and the standing orders of the Regiment at defiance, naturally led him to conclude.

3. The Commanding Officer also directs me to observe that a more respectful demeanour when offering the verbal explanation alluded to in your letter, would have given weight to your present disavowal of intentional neglect of duty or respect to Major Holbrow, whereas your persisting in contradicting him, and refusing to listen quietly, as it was your duty to do, to the remarks of your Commanding Officer, has materially weakened his belief of the assertions contained in your letter.

4. From your improper behaviour at the above-mentioned interview, and from your having taken advantage of a private conversation on the subject of leave of absence by introducing it in your public letter to me of yesterday's date ; the Commanding Officer requests that your future communication with him may be strictly official and through the prescribed channel.

To LIEUT. W. Y. TORCKLER,
Interpreter & Quarter Master,
 4th Regt. N. I.
 Sultanpore Oude. }

I have, &c.,
 G. SALTER, LIEUT.
 ADJUTANT,
 4th Regiment N. I.

No. 4. C.

SULTANPORE ; 20TH FEB., 1829.

SIR,

1. I have the honor to acknowledge the receipt of your letter of the 17th Instant ; however culpable the irregularity of my conduct may have been, in omitting to make an official communication from Allahabad of my wish to remain there beyond the 9th Instant, yet I did hope it would have admitted of some excuse, in the estimation of the Commanding Officer, under all the existing circumstances.

2. But since Major Holbrow, Commanding the Regiment, appears still to believe that I intended to treat him with wilful disrespect, and to doubt the accuracy of my assertions to the contrary, I can only refer to my Brother-in-law, Dr. Laughton, at Allahabad, to know, if such in his opinion was the case; if I did not relate to him, as my reason for thinking there was no necessity to write, when he recommended me to do so, the particulars of the conversation with Major Holbrow the day previous to my leaving Sultanpore, and that Major Holbrow would not be offended at my silence, as he had not only readily granted me leave for a week, but said he would have no objection to my absents myself for ten days, but for the probable arrival of His Excellency the Commander-in-Chief at Allahabad in the interim, and had even expressed his readiness, otherwise, to have sanctioned my absence till the 14th Instant, from all which, (if I did not state it) it was my firm persuasion that Major Holbrow would be satisfied with my personal explanation.

3. Further I was the more confirmed in this now seemingly mistaken idea, by the cordial and friendly deportment, Major Holbrow evinced towards me during the conversation referred to at his Quarters, notwithstanding the circumstance alluded to in the 2d Paragraph of your letter when I had unguardedly rendered myself amenable to his displeasure, having occasioned so recently; and had it operated to my prejudice, and induced the Commanding Officer to withhold the indulgence of leave, he had before promised me, and which I abstained from again soliciting, apprehending I should meet with a refusal, I could only have acknowledged the justice of his decision; but over-looking my conduct, as he did on that occasion, and of his own accord granting me the indulgence he perceived I sought for, I confidently hoped Major Holbrow was satisfied, I had not been so much in fault, as he was at first led to believe, and certainly I did not expect it would have been again reverted to.

4. I take the liberty here to observe, as I am accused of having set the standing orders of the Regiment at defiance, that none have ever yet been sent me. If I mistake not, about sixteen Months since, it was intimated in Regimental Orders, that they would be Circulated for the purpose of being Copied to every Officer in rotation commencing with the Junior Ensign; and although some of the Junior Officers commenced Copying them, I have repeatedly understood that, since the receipt of the new standing Orders to the Army, their further Circulation has been suppressed.

5. In reference to the last Paragraph of your letter, I beg most respectfully to submit to the Commanding Officer, that I have taken no improper advantage of the conversation he was pleased to hold with me, on the subject of Leave of Absence that I humbly conceive I am justified in making public use of whatever occurs between me and my Commanding Officer at any time, but more particularly when constrained to do so, as in the present instance in my own defence, or when the public Service requires it, since my private conduct is subject always to his cognizance and censure.

6. It would yield me infinite mortification to understand, from the concluding clause of the same Paragraph, that I am for the future debarred from all private intercourse with the Commanding Officer, were it not, that, in conse-

quence of the treatment I experienced, when I waited on Major Holbrow after my return from Allahabad, having first written a note of explanation as I had seen that he was offended with me; when without entering into other particulars, he did not pay me the common civility of asking me to be seated. I feel it to be a necessary measure; though I shall never cease to view with unfeigned regret the slight misunderstanding which has given rise to the present unpleasant discussion, (and which I have no desire to trouble the Commanding Officer with any further) and the unhappy results which I did not anticipate.

7. To conclude, if there was any impropriety in my behaviour towards Major Holbrow, during the above-mentioned interview, I sincerely regret it was not pointed out to me at the time when I should have been as ready as I am now in making every suitable concession.

To
LIEUT. SALTER,
Adjutant,
4th Regiment N. I.)

I have, &c.,
W. Y. TORCKLER, Lieut.
Interpreter and Quarter Master,
4th Regiment N. I.

No. 711.

SERVICE.

No. 5. C.

SULTANPORE; 21ST FEB., 1829.

Sir,

1. Your letter of yesterday's date has been duly received, in which you acknowledge that you refused to give the Commanding Officer notice of your prolonged stay at Allahabad, although recommended to do so by Dr. Laughton, but having once expressed his decided opinion, Major Holbrow directs me to inform you that he shall consider any further Correspondence on the subject as unnecessary and vexatious.

2. Major Holbrow regrets to observe that his lenity towards you, in passing over your misconduct in Command of the 2d Company, has produced a very unexpected effect upon your mind. It appears that the mildness of his rebuke has caused you to doubt the extent of your offence, and even to question, or at least to affect ignorance of, the existence of the Regulations against which you offended; a mode of reasoning which, if persisted in, will compel the Commanding Officer to submit the affair to the consideration of higher authority, in order that you may be made sensible that his forbearance entirely arose from his unwillingness to check by harshness that reform in your conduct which he sincerely wished to promote by every means in his power.

3. Major Holbrow is sorry to find that you have, in Para: 6 of your letter, erroneously accused him of a breach of politeness; he hopes you have done so through mistake, as he otherwise could not attribute the mention made of it in your letter to any other motive than that of a wish, to widen the breach existing between you.

4. With regard to the concession proffered in the concluding Para : of your letter, the Commanding Officer desires me, to say, that you have so often offended, so often expressed contrition, and so often promised amendment, that he can no longer put faith in your assurances, and he earnestly advises you to produce that favorable impression by your future conduct which words have ceased to effect.

5. In conclusion I am ordered to request, that you will desist from any further communication on this unpleasant subject.

To

LIEUT. W. Y. TORCKLER,
Interpreter & Quarter Master, }
4th Regiment N. I.
SULTANPORE OUDE.

I have, &c.,
G. SALTER, *Lieut.*
Adjutant,
4th Regiment. N I.

No. 6. C.

COPY OF PRIVATE NOTE.

MY DEAR MAJOR,

14TH FEBRUARY, 1829.

I have just written an official Report of my arrival to the Adjutant, I returned late last night, and should have been here the preceding Evening, but for an accident that occurred in laying my Dawk. The alarming state in which I found my Sister, Mrs. L. whose life was for several days despaired of alone, induced me to avail myself of the full period of ten days leave, which I applied for, instead of seven, by the expiration of which I had intended to have returned, and had the satisfaction of knowing that I left her out of danger. I should have written to you, but, as a letter arrives here from Allahabad only on the fourth day, I thought it unnecessary, as I should get here before it.

My trunk with my Regimental's Servants, &c., are all in the rear, and cannot be up till late from the heavy rain that has fallen, else I should have waited upon you in person now.

To

MAJOR HOLBROW,
&c. &c. &c.
14TH FEB. 1829.

Your's Sincerely,

W. Y. TORCKLER.

SERVICE.

No. 7. C.

SULTANPORE OUDE ; 24TH OCTOBER, 1829.

SIR,

I have the honor, respectfully to solicit Brigadier General Patton C. B.; Commanding in Oude will permit me to submit. through you, for his perusal and consideration, the accompanying Documents, all further communication with my immediate Commanding Officer on the subjects of which they treat, having been closed against me by his express orders as intimated in the Adjutant's last letter to my address of the 21st instant annexed.

2. It is under the most unfavourable appearances, and with very painful sensations, that thus for the first time, I venture to obtrude myself on the notice of the Brigadier General. Commanding, feeling myself an aggrieved at the

same time that I am an offending individual, and that not only in the present, but as it would appear by this correspondence in many instances of former misconduct, yet I do not feel the less confident, that Brigadier General Patton, C. B., Commanding, will bestow upon my case the requisite attention, and decide with impartiality on the whole of my conduct.

3. It is not with any disposition to cavil at or find fault with the opinion of Major Holbrow, Commanding the Regiment, or to give the Brigadier General Commanding unnecessary trouble, but it is in consequence of a system which appears to be observed by Major Holbrow in regard to myself, of constantly reverting to past transactions which have either been overlooked or decided on at the time, by himself or superior authority, and of threatening me with a reference to higher authority on this, as on every other occasion upon matter suffered to accumulate against me, notwithstanding that I have invariably whenever such has been the case urgently solicited a Public investigation ; (a procedure, the hardship of which is sufficiently obvious as it is productive of harrassing reflections which mingle with & embitter and interrupt all my pursuits recreations and studies considerably diminishing all emulation or pleasure in the active discharge of the duties of my profession, destroying any good resolutions I may have formed for my future guidance, impairing my health and spirits and in fact rendering my very existence perfectly wretched and insupportable by keeping both body and mind in a constant state of anxiety and excitement ;) that I am constrained to implore the protection of Brigadier General Patton C. B., Commanding in Oudh and to look up to him for that attention and consideration which is *denied* me here.

4. In adverting to the original subject of leave of absence, which led to this unpleasant correspondence it appears to me unnecessary to dwell upon what is so fully discussed in the letters, further than solely to reiterate my assurance, that I had no intention to evince the slightest disrespect, or to offer any offence to Major Holbrow as Commanding Officer, by prolonging my stay at Allahabad without communicating the necessity, I was under of doing so by letter, to the period I conceived I had conditionally obtained his sanction to my remaining there ; altho' granted verbally and in a conversation which is afterwards considered by Major Holbrow, private ; and adverting to the erroneous impressions under which, I acted, I humbly submit to Brigadier General Patton, C. B., Commanding to decide whether that degree of culpability attaches to my conduct on this occasion which, as I cannot but feel, it has been studiously sought to mark it with.

5. I will trespass no longer on the Brigadier General's time, but, having stated the grounds of my present appeal to him will proceed with as much brevity as possible to bring to his notice the passages in the Adjutant's letters to my address of the 17th and 21st February annexed, by which I feel myself particularly aggrieved, as if the offensive remarks conveyed through them and the grave charges contained therein are suffered to remain unnoticed or unexplained on public record, I feel convinced, they will tend to degrade my character as an Officer and a Gentleman. in the estimation of my Brother Officers, subject me to the constant repetition of the humiliating treatment before described, and eventually perhaps furnish materials to effect the future destruction of all my prospects in the Army. I therefore earnestly hope, Brigadier General Patton, C. B., will perceive the necessity of either ordering an inquiry, into the grounds of dissatisfaction with my

conduct which Major Holbrow Comdg. the Regt. may now have to produce or of obtaining from him some public assurance of security to me for the future, as far as relates to what has past.

6. In reference to the 2 Paragraph of the Adjutant's letter No. 3, and my reply thereto Paragraphs 3 and 4 letter No. 4 far from doubting the extent of my offence or wishing to affect ignorance as supposed in the next letter from the Adjutant No. 5, I thought, I had distinctly avowed total ignorance of the standing Orders of the Regiment, which expecting to receive them in my tour as intimated publicly about sixteen months since, I have never seen to this day, nor as I have reason to believe, have many officers Junior to myself.

7. In the instance of my mis-conduct in Command of the 2d Company here recorded, I felt sensible that I had merited, and indeed expected nothing less than the whole weight of the Commanding Officer's serious displeasure, conceiving that he would hold me responsible for any irregularities in my Company, and I left the Head-Quarters of the Regiment, deeply impressed with gratitude towards Major Holbrow, for his evident lenity and forbearance to me on this occasion, and which, I regret, my subsequent conduct bears too much the appearance of my having abused. In this case, a Sepoy of my Company was allowed to be absent four days without any report whatsoever being made, but the act of the Commanding Officer punishing the Subadar, Pay and Orderly Havildars convinced me that Major Holbrow was satisfied, that this gross irregularity had not been sanctioned by myself, though I did candidly confess, that deeming his case urgent, I had taken on myself to give the Sipahce leave for one day in addition to the two, the Havildar brought me word, the Commanding Officer had himself granted; but, if as it seems, a doubt still exists in the mind of Major Holbrow, I am prepared to prove, by the evidence of two witnesses that, I did not give orders that the Man's absence should not be reported at all, but only provided he returned by Tattoo beating on the third day, not to notice his absence on that day, unless enquiry was made; and had the Pay Havildar not exceeded, or deviated from this Order, I should have felt it an incumbent duty on me, as his immediate Officer in Command, to have deprecated his conduct, whatever consequences might have resulted to myself. Moreover, our Lieutenant Salter, then Acting Adjutant, remarking, that "the Pay Havildar said he had acted by my Orders" and that, "he (Lieutenant Salter) conceived I ought to be held responsible" (which remark appeared to me indelicate and unwarrantable, as his opinion was not called for, as my Junior Officer, and as a good understanding did not exist between us) Major Holbrow Commanding the Regiment, observed in my presence, as I was then attending at his Quarters by his public requisition on the occasion, "I do not" agree with you, Mr. Salter in that opinion; no matter whether Mr. Torckler did or did not give the Order, I shall punish the Havildar for disobedience of my Orders, the standing Orders of the Regiment" or words to that purport, at the same time directing the Havildars being deprived of his appointment by his removal to the 4th Company, although I had endeavoured earnestly to suggest before this, that there was a possibility that the Havildar had not understood my Orders. I would not willingly by omitting to mention, that my fault was aggravated, by the circumstance of the Commanding Officer having refused, as the Havildar told me, to grant the Man in question more than two days leave, lead the Brigadier General Commanding to

suppose, that I feel disposed intentionally to suppress any matter, but in this, I confidently place my whole trust and reliance on his mercy and discretion.

8. In the 3d Para: of the Adjutant's last letter of the 21st Instant, No. 5, Major Holbrow indirectly denies an assertion of mine, and appears willing to impute it to mistake on my part. It was not my wish to urge the point, but it becomes necessary now to add by way of explanation, that it was the more strongly impressed on my mind from my forming the resolution as soon as I perceived the marked alteration in Major Holbrow's usual deportment to me, upon going into the inner room, not to take the liberty of seating myself without being desired to do so, though on first arriving at the Commanding Officer's Quarters, I found Major Holbrow seated in the Verandah, with a vacant Chair near him, which from mere habit I proceeded as usual to occupy without looking for an invitation to do so, nor, to the best of my recollection, was one given even then, nor did Major Holbrow rise to receive me. We could not have remained there more than two or three minutes whilst Major Holbrow proceeded to censure me with some severity, but on my attempting to speak, vehemently refusing to hear any thing I had to say without his Adjutant, he rose and went into the room, seated himself at the Table, and at my request, sent for the Adjutant, waiting whose arrival I continued waiting about for at least 10 minutes during which Major Holbrow, also rising and walking up and down the room, scarcely ceased to reprimand me with severity of manner, and in a loud strain of voice within the hearing of his Servants and Orderlies in waiting, and whenever I attempted to offer any thing in my own behalf, he compelled me to be silent; and, although I have been accused of refusing to listen quietly to the remarks of the Commanding Officer, I did repeatedly submit, and actually observed more than once that I did so in obedience to his orders, as indeed I durst not have refused doing.

In the hearing of Lieutenant Macdonald, Acting Adjutant, the Commanding Officer refused with much warmth to be questioned, upon my simply appealing to himself for the truth of my assertion, but as Lieutenant Macdonald had seated himself in the verandah with his back turned to us, he could not perceive the manner in which Major Holbrow instantly motioned me to quit the house, with the words "Good morning Sir." It is possible, that in the heat of the altercation that took place, and which I was not prepared to expect, this treatment led me to express myself more warmly than I ought, but had I been made sensible at the time of any want of respect or propriety, with which I am afterwards charged, I could not have forgotten myself so far, and should have instantly made every concession.

9. Lastly, after having twice cast doubt upon my assertions (with reference to Par. 3, Letter No. 3, and Par. 3, Letter, No. 5) Major Holbrow concluded with rejecting the concession proffered by me, in the last Par. of this letter, distinctly intimating that in his estimation my word is no longer deserving of credit.

How far I have failed in acting up to the promises I have made remains yet to be proved; but, in regard to the frequent instances of former misconduct here carefully reverted to on public record (when in two cases, the trouble I was involved in from imprudence and inexperience actually originated in the offensive

conduct of others to myself and but once was my conduct as an Officer concerned) I had hoped, none would have thought of reviving subjects that had been set at rest as I was led to believe by Major Holbrow himself for ever, I shall therefore make no apology for declining to enter upon them here, feeling that I have already occupied too much of the Brigadier General's time and patience, and as I am prepared to do so, only before the highest Military Tribunal; and I fervently hope, that my motives will be fully understood and appreciated, when the fact of my mind having been incessantly kept in a harassing state of perplexity and fear for a twelve month past, is taken into consideration, and that Brigadier General Patton, C. B., Commanding in Oude, will graciously condescend to fill towards me the room of that Counsellor and friend whom, young and inexperienced alone and unassisted as I am at this out-Station, I so much need in my present perilous situation, and prevent my interests, from being injured by any seemingly improper ideas or expressions in this letter, which under the influence of my present agitated feelings, may have escaped me, as my sincere object in mentioning now circumstances which hitherto I had abstained from doing, is, not for the purpose of advancing accusations against my immediate Commanding Officer, but to obtain some personal security and tranquillity for the future in regard to my past conduct.

To CAPT. SMALPAGE,
Major of Brigade,
&c. &c. &c.,
Head-Quarters, Lucknow.

I have, &c.,
W. Y. TORCKLER, LIEUT.,
Intr. and Qr. Mr.
4th Regiment N. I.

SERVICE.

No. 8. C.

SULTANPORE; 26th FEB., 1829.

SIR,

I have the honor to request, that you will submit to Major Holbrow, Commanding the Regiment, and with his permission transmit the accompanying letter to the address of Captain Smalpage, Major of Brigade, Lucknow, together with the Correspondence attached, and that you will do me the favor to acknowledge the receipt and dispatch of the same as early as convenient.

To LIEUT. G. SALTER,
Adjutant,
4th Regt. N. I.
Sultanpore Oude.

I have, &c.,
W. Y. TORCKLER, LIEUT.,
Intr. and Qr. Mr.
4th Regiment N. I.

MEMORANDUM.

No. 1. Copy of a letter from the Adjutant to Lieutenant Torckler, dated 13th February, 1829.

No. 2. Copy of Lieutenant Torckler's letter to the Adjutant in reply, dated 16th February, 1829.

No. 3. Copy of a letter from the Adjutant to Lieutenant Torckler, dated 17th February, 1829.

No. 4. Copy of Lieutenant Torckler's letter to the Adjutant in reply, dated 20th February, 1829.

No. 5. Copy of a letter from the Adjutant to Lieutenant Torckler dated 21st February, 1829.

No. 6. Copy of a private note from Lieutenant Torckler to Major Holbrow, Commanding the Regiment, alluded to in the foregoing letters, dated 14th February.

No. 7. Copy of a letter from Lieutenant Torckler to Captain Smailpage, M. B. Lucknow, dated 24th February, 1829.

No. 8. Copy of a letter from Lieutenant Torckler to the Adjutant of the Regiment, giving cover to the same, dated 26th February, 1829.

No. 714.

SERVICE.

No. 9. 'C.

SULTANPORE ; 28TH FEBRUARY, 1829.

SIR,

I have the honor in compliance with the request of Lieut. Torckler, 4th Regt. N. I. under my command, to forward the accompanying letter to your address with the Correspondence annexed and for the information of Brigadier Patton, C. B., beg leave to intrude upon your attention a few remarks and documents connected with the subject of Lt. Torckler's letter.

2. Lieut. Torckler appears to wish the Brigadier to consider him as unjustly persecuted ; that he has not been so, my lenity towards him in the affair alluded to in Paragraph 7 of his letter, I trust will prove ; a lenity which indeed I think I was scarcely warranted in exercising but I was induced to do so by the reasons detailed in Paragraph 2 of my Adjts. letter No. 5. of the correspondence.

3. In reply to Lt. Torckler's avowal of total ignorance of the Regt. Standing Orders I append his letter No. 1. of the 15th July 1828, in which he refers to them in the very case of the unauthorized absence of Sepoys. I beg leave also to mention that the new standing orders were issued to the Officers immediately after the arrival of the Corps at this station, and yet it seems that Lieut. Torckler has not even read the 2nd Paragraph of section 1, or has acted in direct disobedience thereof.

4. It is true that I have reverted to the former misconduct of Lieutenant Torckler, and I consider myself justified in having done so, for surely promises of amendment if not fulfilled, far from obliterating the remembrances of former faults will greatly aggravate the commission of fresh Offences.

5. With reference to my rejection of Lt. Torckler's proffered concession ; I must annex letters No. 2 and 3 which I think, will shew that I have not resorted unnecessarily to harsh measures, and that I have some grounds for my want of faith in the assurances of reformation so repeatedly given by Lt. Torckler. On receipt of the letter (B. No. 3.) I did all in my power to reconcile Lt. Torckler to his Brother Officers, and treated himself with the greatest civility, but I told him at the same time that although I could forgive, his future conduct alone could make me forget, his recent misbehaviour, and cautioned him that I should keep these two letters as a check upon him. I acted thus towards him from having had repeated experience of the facility with which he apologized and expressed contrition and the readiness with which he forgot the promises so lately made ; as may be seen by the documents in the Adjutants Office.

6. I confidently assert that this Officer has given me more trouble than the whole of the Regiment, and that, far from rendering me that support which I might expect from a Staff Officer he has been a constant source of annoyance and vexation to me. Of his litigious disposition the Brigadier may judge from the fact of his keeping copies of his private notes, one of which is annexed to the accompanying public correspondence, which must have been kept by Lt. Torckler when contemplating a public representation of the business as the most likely termination of the correspondence then commencing.

7. In conclusion I beg leave to request, that, as Lt. Torckler has cited an enquiry into his conduct, and my treatment of him, Brigadier Patton will be pleased to favor us both with an investigation as I am heartily tired of the repeated faults promises and appeals of this Officer, and in the hope that this mutual request will be granted I will not trespass upon your time with any further particulars.

To

CAPT. SMALLPAGE,
Major of Brigade Lucknow.

I have &c.

JOHN HOLBROW Major,
Comdg. 4th Regiment N. I.

SERVICE

No. 716.

No. 10. C.
SIR,

SULTANPORE ; OUDE 1ST MARCH, 1829.

In reply to your letter of the 26th ultimo, I have the honor to inform you that your letter to the address of Captain Smallpage, with the Correspondence attached, was yesterday forwarded to Lucknow.

To LIEUT. W. Y. TORCKLER,
Intr. and Qr. Mr.
4th Regiment, N. I.
SULTANPORE.

I have, &c.,

G. SALTER, Lieut.
Adjutant, 4th Regiment N. I.

No. 40.
COPY.

No. 11. C. OUDE BRIGADE OFFICE LUCKNOW 4TH MARCH 1829.

I have the honor to acknowledge the receipt of your letter of the 28th ultimo, together with the several documents which accompanied it and which are herewith returned to you in obedience to the instructions I have received.

In forwarding these documents Brigadier Patton C. B., directs me to acquaint you that he cannot consider investigation on the question at issue between yourself and Lieut. Torckler, at all called for ; indeed the subject is altogether too trivial to counterbalance the public inconvenience which would be caused by its submission to a court of Inquiry.

The Brigadier observes with regret that the correspondence on the part of Lieut. Torckler evinces a marked spirit of litigation and evident desire to cavil at and dispute the legal authority of his immediate Commanding Officer, and that it is, throughout highly reprehensible ; and you will be pleased to caution that Officer to a more obedient and respectful line of conduct towards yourself, as in the event of his being again brought to the notice of the Brigadier under similar cir-

circumstances the unfavourable impression which the present instance leaves on the Brigadier's mind, will not fail to operate seriously against him.

In conclusion the Brigadier Commanding desires me to remark that in vindicating your own authority and after having censured Lieut. Torckler's inattention to his duty it is to be regretted that you permitted further correspondence on his part, a measure but ill calculated to suppress a spirit of litigation and support the legitimate authority of the Commanding Officer.

To

MAJOR HOLBROW,
Comdg. 4th Regt N. I. *Sultanpore.*

I have &c.

F. SMALLPAGE,
M. B. Oude.

Correspondence, D.

Connected with the dispute on Parade, and Lieut. Torckler's removal from his appointment.

SERVICE.

No. 1. D.

No. 745

SULTANPOOR OUDE; 18TH APRIL.

SIR,

1. I am ordered by the Commanding Officer to forward to you the accompanying Order Book, and to enjoin your particular attention to the Division Orders of the 13th September 1827, pointing out your proper place and prescribed duty on Parade, to which directions the Commanding Officer desires that you will strictly conform.

2. I am further directed to request that you will return the Order Book to my Office, after an attentive perusal, sufficient to prevent your again erroneously giving such peremptory and uncalled for orders as you did this morning.

To

LIEUT. TORCKLER,
Intr. & Qr. Mr. 4th Regt. N. I.

I have &c.

GEORGE SALTER, Lieut.
Adjutant, 4th Regt. N. I.

SERVICE.

No. 2. D.

SULTANPORE OUDE; 17TH APRIL, 1829.

SIR,

I have the honor to acknowledge the receipt of your letter of yesterday's date; and in returning the Orderly Book, to request, that after submitting the enclosed letter to the address of the Brigade Major at Lucknow to the perusal of Major Holbrow, Commanding the Regiment, you will with his permission transmit the same per Dawk, and favour me with an intimation to that effect as early as possible.

To LIEUT. SALTER,
Adjt. 4th Regiment N. I.
SULTANPORE.

I have, &c.,
W. Y. TORCKLER,
Intr. & Qr. Mr. 4th Regt. N. I.

SERVICE.

No. 3. D.

SULTANPORE OUDE ; 16TH APRIL, 1829.

SIR,

I regret deeply so soon to find myself again under the necessity of earnestly soliciting the attention of Brigadier Patton, C. B., Commanding in Oude, to the undue degree of severity with which Major Holbrow, Commanding the Regiment, continues to mark my conduct on every trivial occasion, but particularly to the unjust and unmerited reprimand, which in this instance, I conceive myself to have received.

2. The facts of the case which I beg permission to submit to the consideration of the Brigadier Commanding, are as follows : On proceeding this morning to occupy my usual Post on Parade, in rear of the Column on the right flank, in marching past in Review Order, which I had hitherto been permitted to do without remark from the Commanding Officer, Lieutenant Salter, the Adjutant did not seem disposed to yield me the precedence, which until this day had not been disputed, and which I consequently conceived my Seniority entitled me to (such, being the customary usage in some Regiments) although not defined in General Orders or Torren's Manceuvres, and on my requesting him to go to the left flank, Lieutenant Salter replied in a contemptuous and sarcastic tone, " the other is your place, Mr. Torekler," without stating any authority whatever for thus taking it on himself to correct me, his Senior Officer, and (as he afterwards admitted) without having the Commanding Officer's orders to do so, when I instantly rejoined by ordering him to change his flank which he then did without further demur. Major Holbrow, Commanding the Regiment, on our arriving at the Saluting flag, called out, " the Adjutant on the right, the " Quarter Master on the left ; Salter, send the Division Orders to Mr. Torekler : but when the Parade was dismissed and the Officers (Native as well as European) assembled in front, after paying every attention to all that Mr. Salter had to say, Major Holbrow proceeded to reprimand me with a severity and vehemence of tone and manner, never adopted by him towards any other Officer whom he may have occasion to correct, and calculated only to excite my feelings, refusing to listen to any thing I endeavoured submissively to urge, and threatening to send me to my Quarters if I were not silent.

3. I beg most respectfully to submit to Brigadier Patton, C. B., Commanding in Oude, that if, for erroneously giving my Junior Officer any Orders on Parade, (as admitted in the annexed Copy of a letter to my address) I merited this harsh treatment, the conduct of Lieutenant Salter himself in making me a reply without any authority, deserved notice ; as well as his wilful and obviously designed neglect of duty in not communicating to me the existence of the Order which it seems Major Holbrow, and himself, as Station Staff, (having the advantage of constant access to the Orderly Books) had discovered since the preceding Field Day, especially, as by the standing Orders the Adjutant is held responsible for the circulation of Orders of every description, in consequence of which I was unduly exposed to public mortification and censure. I leave it to the Bri-

(LXVIII)

No. 225.

No. 11. D.

CANNORE DIVISION; HEAD-QUARTERS;

CANNORE; 5TH MAY, 1829.

SIR,

I have the honor to transmit for submission to His Excellency the Commander in Chief, a letter from Brigadier Patton C. B., Commanding in Oude, with documents connected with the subject, and charges preferred by Major Holbrow, Commanding 4th Regiment N. I. at Sultanpore, against Lieutenant Interpreter and Quarter Master Torckler of that Regiment. As the misconduct charged, is the having wilfully and falsely misrepresented the conduct, and aspersed the character of his Commanding Officer, in a letter to the address of the Major of Brigade at Lucknow, I have not thought it necessary to order a court of enquiry on Lieutenant Torckler, a copy of whose letter forms one of the documents now submitted for the consideration of His Excellency, with whose sentiments and orders I will be happy to be favored.

It appears to me that the third paragraph of Lieutenant Torckler's letter, the latter part of which is recited as the first instance of the second charge, was more immediately directed at Lieutenant and Adjutant Salter; Major Holbrow's name is, however, also included in that paragraph, and he considers himself as aspersed in it, a point which is submitted to the judgment of His Excellency the Commander-in-Chief.

To

LIEUT. COL. C. FAGAN,
Adjutant General of the Army.

I have, &c..
S. WHITTINGHAM,
Comdg. Cannore Division.

No. 680.

ADJUTANT GENERAL'S OFFICE,

No. 12. D.

HEAD-QUARTERS, POORNE, 22ND MAY, 1829.

SIR,

1. I have had the honor of receiving, and of laying before the Comdr.-in-Chief, your letter of the 5th Instant, with the enclosures submitted to you, by Brigadier Patton C. B. Commanding in Oude.

2. His Excellency desires you will cause it to be intimated to Lieutenant Torckler, against whom his Commanding Officer Major Holbrow has transmitted the charges which form a part of the papers under acknowledgment, that this instance not being the first, in which that Officer has justly incurred the displeasure of his superiors he cannot any longer be permitted to hold the Regimental Staff appointment of Interpreter and Quarter Master.

3. The proof of the unofficer-like and insubordinate spirit manifested by Lieutenant Torckler being contained in the letter addressed by him to the Major of Brigade, His Excellency does not think the occasion calls for an investigation by a Military tribunal.

4. You will, at the same time have the goodness to inform Major Holbrow, that when Lieutenant Torckler hesitated to obey instantaneously, the

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order given to him by his Commanding Officer, it was Major Holbrow's duty as Commanding Officer, to have enforced immediate attention to it, without advertence to the division Orders, which he desired the Adjutant to send to Lieutenant Torckler.

To

MAJOR GENL. Sir S. WHITTINGHAM,
K. C. B., and K. C. H.,
Commanding Cawnpore Division.

I have, &c.,

C. FAYAN,
Adjt. Genl. of the Army.

Correspondence, C.

Connected with certain accusations preferred by Lieut. Torckler, against Major Holbrow, comdg. 4th Regt. N. I. and Lt. Torckler's consequent removal to do duty with the 48th Regt. N. I.

SERVICE.

No. 1. E.

SULTANPORE OUDE ; 13TH JUNE, 1829.

SIR,

I have to request that the enclosed letter and documents attached, may after submission to Major Holbrow commanding the Regiment, be forwarded to the Head-Quarters of the Army through the pre-scribed channels.

To LIEUT. G. SALTER,
Adjutant,
4th Regt. N. I.

I have, &c.,

W. Y. TORCKLER, LIEUT.,
4th Regiment N. I.

SERVICE.

No. 2. E.

SULTANPORE OUDE ; 13TH JUNE, 1829.

SIR,

1. It having been intimated to me that His Excellency the Right Honorable the Commander-in-Chief has been pleased to direct my removal from the Regimental appointment of Interpreter and Quarter Master, which I have held for upwards of two years past without having been once censured for any fault in that Department, and the Duties of which I have made it my study zealously to discharge, as His Excellency was of opinion that the proof of an unofficer-like and in subordinate spirit was manifest in my letter to the Major of Brigade, Lucknow, I beg most respectfully and humbly to express my disappointment at the event, as after having been nearly two months in arrest, (eighteen days of which elapsed before the Charges against me were even forwarded from Cawnpore, to which the dawk travels from this Station in four or five days) I had hoped to have been allowed an opportunity of pleading my cause before a Military Tribunal, and might now be inclined to urge my right of appeal to trial on the Charges exhibited against me by Major Holbrow, Commanding 4th Regiment Native Infantry, did I not feel sensible, that manifest as my guilt appeared to His Excellency, I am indebted to the well known clemency and gracious forbearance of Lord Combermere, that he has not seen fit to submit my offence to the Sentence of a General Court Martial, which I acknowledge with sentiments of the most profound respect and gratitude.

2. Yet, I trust, I shall be pardoned the anxiety I feel to evince to His Excellency the Commander-in-Chief my sincere regret, that under any circumstances, I should have committed myself so far, and have suffered warmth of temper and indiscretion to lead me to make use of any expressions which might incur His Lordship's displeasure, and in any way indicate a spirit of insubordination; but that I was laboring under the influence of feelings exasperated by a sense of unredressed wrongs, and not until I had in vain endeavoured to depict my unfortunate Situation by an urgent appeal to the interposition of Brigadier Patton, C. B., Commanding in Oude, may appear from the accompanying documents, which, as others of a prejudicial nature, to me seem to have been already submitted to His Lordship. I humbly trust will meet with some consideration.

3. In respect to this reference to the Brigadier Commanding here alluded to, I think it necessary to mention, as a proof of the spirit prevailing against me, that whilst it was yet pending, the Adjutant, Lieutenant Salter, invited Lieut. Wilson, of the Regiment, who was living together with me at the time, over to his Quarters, and did his utmost to extract from my own chum information to my detriment, questioning him closely and repeatedly repeating me by name. Lieut. Wilson, in mentioning the circumstance to me, expressed his disgust and abhorrence at the conduct of Lieutenant Salter, and at his thinking him capable of such an act of baseness and treachery, and declared himself ready to bear public testimony to it, if ever required. He also acquainted me, that, a few days after in presence of Major Holbrow, Commanding the Regiment, the Adjutant, Lieutenant Salter again interrogated him in allusion to the same subject, from which, I am led to believe, that he did so with the sanction of the Commanding Officer. Thus my conduct appears to have been submitted to the most strict surveillance; and when matter was wanting, even the most unworthy means were not neglected to obtain information; but the same rigid system of discipline does not seem to exist with respect to the Regiment in general. For, on a recent occasion, when a Non-Commissioned Officer, of the Regiment, advanced what was designated by the Commanding Officer himself, "a very serious Charge against an old Captain of the Corps," communicated by Lieutenant Wilcox, of the Regiment, in a public letter to the Adjutant, no public inquiry was ordered, although it related to the bad state of discipline, and certain gross irregularities said to be existing in the 2d Grenadier Company of this Regiment; but Lieutenant Wilcox was ordered to attend at the Commanding Officer's Quarters, when Major Holbrow told him, as I am authorized by Lieutenant Wilcox to state, that "unless he wished to injure Captain Caley, whom, if proved, it was calculated to do much harm" as "he added I strongly suspect there are money matters in the case" he desired Lieutenant Wilcox to withdraw the Paragraph containing the information which was reported to him by the Pay Havildar of the Company, in a public manner. This, Lieutenant Wilcox, though at first reluctant to consent to, as he said, he had deemed it incumbent on him to act as he had done for the benefit of the public Service, and of a Company which it might devolve on him to Command some day on active Service, and as the Havildar partially denied his assertions before Major Holbrow, he said, he was ready to bear testimony to it on oath, and could produce a witness to corroborate the same; but seeing that Major Holbrow, who approved

his opinion to have been influenced by that of the Adjutant, Lieutenant Salter, was disposed to impute to him improper motives of conduct. Lieutenant Wilcox was at length induced to comply with his request, which appeared to him in the light of an Order, although Major Holbrow expressed himself satisfied that the Havildar had given the information and "even more perhaps than what appeared before him then," regretting that it was now too late to recall the recommendation he had forwarded in his favor for promotion, and admitting, at the same time, from his own experience, the bad conduct and discipline of the Men of the 2d Grenadier Company generally.

4. Though recrimination is no part of justification, yet, after the severity with which my own conduct has invariably been visited, and particularly in the instance of my having once taken out the Quarter Master's Carts with me on a short excursion for a few days, when I was severely reprimanded by Major Holbrow, in Regimental Orders, about a twelve month since, I trust, I shall be held justified by His Excellency the Commander-in-Chief in bringing to his notice the fact of Major Holbrow, Commanding the Regiment and Station, having himself deviated from the strict Orders and Regulations of Government, "prohibiting any Public Cattle whatsoever being under any circumstances employed for private purposes" and "calling the attention of Officers Commanding Divisions, Stations, Detachments and Corps to the responsibility which attaches to their situation and to the duty they owe to Government in strictly enforcing those orders" (G. O. C. C. 20th June, 1806) as, I am credibly informed that within a few month past, Major Holbrow did employ the public cattle at this station to assist in bringing in some timber which he had obtained from Rajah Dursun Singh the Chukledar, for his private use, when in consequence of the Hackery upsetting a Bullock, belonging to the Commissariat Department it received a severe contusion which caused the death of the animal in a few days.

5. In reference to G. O. C. C. 15th Nov. 1806, prohibiting Officers "from employing men under their command in any way whatsoever not strictly in conformity with the Regulations of Government and within their line of Military duty as Soldiers," as also to the General Orders lately issued regarding Officers borrowing money from the men under their Command, I beg permission to submit the following facts relative to the Pecuniary transactions of Major Holbrow, with Ramnoth, a Naick of the Regiment. This man, who was employed as Sipahce in writing the daily returns of the Regiment, as usual in other Regiments, has been continued in that office even since promotion, an injustice to the other non-Commissioned Officers of his rank, upon whom the duty he is thus exempted from falls heavily; and for a length of time past he has also been employed by Major Holbrow, in disbursing his private expences, and acting as his private cash-keeper, and accountant. Not long since, some Bunneahs of the Regimental Bazar, complained to me, that they were unable to recover a balance of upwards of 400 Rupees borrowed from them by the Naick Ramnoth, in the month of December last, in the name and on the account of Major Holbrow, which he promised to repay on the next issue of pay! that, they had been induced to lend him the cash, knowing that he had charge of the general expenditure of the Comdg. Officer's house, but four months had elapsed without its being repaid and

they were constantly put off with excuses and promises, at which they were much distressed by reason of their extreme poverty : subsequently I understood that these men were deterred from preferring their complaint, as I advised, in the prescribed form and manner, by the intimidations and threats of the Naick, who had got intelligence of their intention. It is not in my power to say whether the Naick was authorized by the Comdg. Officer to raise the money, or not ; though I recollect perfectly well myself, and perhaps other Officers may, the fact of Major Holbrow mentioning at the Mess one night about the period specified, that he had borrowed about 4 or 500 Rupees in the Bazar, to be repaid on the next issue of Pay.

6. Inclined as natives generally are to take every advantage of their situation and to exceed the instructions given them, when they have any chance of doing so with impunity, not hesitating to make use of the name of their employers to attain their ends whether authorized or not, it may be conceived what an extraordinary influence this man must hold, and to what a dangerous extent it may be exerted over the minds of the men of the Regiment, as well as of the Natives at large, disposed as they are at all times to view with dread and jealousy a Non-Commissioned Officer entrusted with the pecuniary concerns of the Commanding Officer, and consequently having frequent access to his private ear, and to ascribe to real or supposed influence every change in the Regiment ; that, such was actually the case and that the Naick was commonly known by the nick name of " Kala Adjutant " and even by the title of " Major " was publicly reported by Lieutenant Wilson to the Commanding Officer, as I was informed and authorized by him to state in the presence of the Adjutant, and Ensign Hill, when he was attending at the Commanding Officer's quarters on an official occasion, without any public measures being taken and without producing the removal of the Naick from an employment as prejudicial to the interests of the Regiment, as contrary to the regulations of the Army, although he had shown himself totally unfit to hold any situation of trust, by the corrupt act of offering Major Holbrow a bribe of 100 Rupees for the release of a Prisoner lately in confinement on suspicion of being concerned in Robbery and Murder, without any serious notice being taken of his crime. This Lieutenant Wilson informed me Major Holbrow had himself communicated to him, but the circumstance is susceptible of other proof.

7. I have further to bring to the notice of His Excellency the Commander in Chief, the fact of Major Holbrow, Commanding the Regiment and Station, having since the arrival of the Corps here received and appropriated to his own use contrary the regulations of Government on the subject, presents of sums of money from the Chukledar Dursun Singh, through the medium of his Vakeel, Annuntarin, and which can be proved by the evidence of several witnesses.

8. In conclusion, after the manner in which I have been harassed for upwards of two years past, in consequence as I suppose of my succeeding to the vacant appointment of Interpreter and Quarter Master, instead of a favoured individual, Lieutenant Goldney, whom Major Holbrow was most solicitous to see nominated (for I can attribute his ill will towards me to no other known cause) and after his having at length succeeded in effecting my removal from it, my present

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conduct may possibly, be harshly judged of; but, I can assure His Excellency the Commander in Chief, though I regret I cannot minutely enter into a detail of my grievances here, without trespassing too largely on the time and patience of His Lordship, that my health and constitution is at length sensibly affected and rather than remain with the prospect of being exposed to ten fold persecution, I would now at once tender for his acceptance, my resignation of the service, did it not appear to me, that the fealty I have sworn to Government is paramount to all other considerations, and I can safely declare that independent of any personal motives which may now be imputed to me I deem it a duty incumbent on me to bring these abuses to the notice of the highest authority, and to substantiate which I am fully prepared whenever called upon, and the result of which I am resolved to abide.

To LIEUT.-COL. COMDT. FAGAN,
Adjutant General of the Army,
&c. &c. &c.,
HEAD-QUARTERS.

I have, &c.,
W. Y. TORCKLER, Lieut.
4th Regiment N. I.

SERVICE.

No. 3. E. SULTANPORE OUDE; 15TH JUNE, 1829.

SRI;

1. Having as yet received no reply to my letter to your address of the 18th current, giving cover to certain documents for transmission to the Head-quarters of the Army: I beg permission in the most humble manner, and without intending the slightest disrespect to the authority of the Commanding Officer, herewith to tender for his acceptance my Sash, and Sword, as pending the consideration of the accusations preferred by me in my letter to the address of the Adjutant General, I feel it would be inconsistent and unbecoming in me to wear them, without positive orders to do so.

2. An examination of one of my witnesses having already taken place in the presence of the Commanding Officer and his Staff only, and during my absence, I beg leave to protest against this to me irregular course of proceeding, and in explanation of the following passage in my letter to the Adj. General, "saying that Major Holbrow was disposed to impute to him improper motives of conduct" to observe that this was not strictly the expression made use of by Lieut. Wilcox, but I endeavoured thereby to convey his meaning, that from what had already dropped from Major Holbrow, had he (Lieut. Wilcox) persisted in recording the subject in question the improper motive of "a wish to injure Captain Carey" would have been imputed to him. Further it will appear on a legal investigation that the Adjutant, Lieutenant Salter, did not arrive at the Commanding Officer's quarters until some time after, or that he was not present during the conversation, which Major Holbrow is pleased to deem of a private nature, and much more that took place.

3. I have to request that this letter, or an attested a Copy of it, may be forwarded with the other papers to the Head-quarters of the Army.

To LIEUT. SALTER,
Adjutant,
4th Regiment N. I.

I have, &c.,
W. Y. TORCKLER, Lieut.
4th Regiment N. I.

SERVICE.

No. 4. E.

SULTANPORE; 15TH JUNE, 1829.

SIR,

Having signified by my letter of this day's date to your address my intention to consider myself under arrest, unless the Commanding Officer shall see fit to give orders to the contrary, herewith I send by the Pay Havildar all Books and documents in my charge, belonging to the 6th Company.

To
LIEUT. SALTER,
Adjt. 4th Regiment N. I.

I have, &c.,
W. Y. TORCKLER, *Lieut.*
4th Regiment N. I.

SERVICE.

No. 771.

No. 5. E.

SULTANPORE OUDE; 15TH JUNE, 1829.

SIR,

I have the honor to inform you that I am directed by the Commanding Officer to receive charge of your Sword and Sash, and to desire you to consider yourself under arrest upon charges which will be hereafter notified to you.

2. I am further directed to acquaint you that it was not the intention of Major Holbrow to have placed you in arrest, as your letter of the 13th Instant will be made the subject of a reference to higher authority; but your present insubordinate conduct has rendered the measure unavoidable.

To LIEUT. TORCKLER,
4th Regt. N. I.
SULTANPORE.

I have, &c.,
GEO. SALTER, *Lieut.*
Adjt. 4th Regiment N. I.

SERVICE.

No. 6. E.

SULTANPORE OUDE; 15TH JUNE, 1829.

SIR,

I have the honor to enclose the Copy of a charge against you, forwarded to Captain Smalpage, and to acquaint you that your letter to the Adjutant General, dated the 13th Instant, has been transmitted to the Lucknow Brigade Office with the papers appended by you and other documents.

To
LIEUT. W. Y. TORCKLER,
4th Regiment N. I.
SULTANPORE OUDE.

I have, &c.,
G. SALTER, *Lieut.*
Adjutant,
4th Regiment N. I.

No. 7. E.

SULTANPORE OUDE; 15TH JUNE, 1829.

William Young Torckler, Lieutenant, Interpreter, and Quarter Master of the 4th Regiment of Bengal Native Infantry, placed in arrest by my orders on the following charges preferred by me.

CHARGE.---For conduct greatly to the prejudice of good order and subversive of Military discipline.

In forwarding to the Adjutant of the Regiment on the evening of the 15th day of June 1829, his Sword and Sash with a letter intimating his intention not to wear them without positive orders to do so, and in sending the Books of the Company under his charge to the Adjutant without orders with a letter declaring that he should consider himself under arrest, unless orders were issued to the contrary. These transactions taking place a few days after the Lieutenant had been released from arrest, and directed in Regimental Orders to return to his duty and to assume charge of the said Company.

The whole or any part of such conduct being in breach of the Articles of War.

GEORGE SALTER, LIUT., }
Adjt. 4th Regt. N. I.

JOHN HOLBROW, Major,
Commanding 4th Regiment N. I.

No. 8. E.

SULTANPORE OUDE; 15TH JUNE, 1829.

SIR,

I have the honor to request that you will submit for the consideration of his Excellency the Right Hon'ble the Commander-in-Chief, the papers here with forwarded, originating in Lieutenant Torckler's letter to your address under date the 13th Inst., which although I had previously determined not to receive any more communications from that Officer, I could not think of returning as it contained many direct charges against myself, and it might have been inferred that I wished to suppress them, whereas I most earnestly request that they may be fully investigated.

2. Until called upon for explanation by authority entitled to demand it, I conceive it beneath me to refute assertions which I can at any time prove to be unfounded, but I trust that a true representation of the whole character and conduct of the Officer who has appeared as an informer against me, with the proofs of such conduct-annexed, will convince his Excellency of the real motives for this long pre-meditated attack of the surreptitious means by which the slight grounds for the accusations have been obtained, and of the heartless manner in which they have been most grossly exaggerated.

3. Of the nature of Lieut. Torckler's conduct while the Regiment was Commanded by Lieutenant Colonel Stewart, a judgment may be formed from the circumstance of Lieutenant Colonel Stewart having said to me shortly before he left the Corps in allusion to Lieut. Torckler "Holbrov that man will be a thorn in your side" this occurred in the presence of Officers of the Regiment. The extract of a letter to Capt. Anderson, Deputy Assistant Adjutant General, Sirhind Division, dated 11th Oct., 1823, appended to this, will also be a witness to his

general conduct previous to that time, and his continued misbehaviour since fully proved by the documents which I am forced to intrude upon the consideration of his Excellency, for the purpose of avoiding the necessity of detailing more minutely facts which will be most fairly stated by the Lieutenant's own letter and the answers thereto.

Upon the evidence of these papers then, I await His Excellency's decision ; but willing as I am in the mean time to pass over in silence Lt. Torckler's most gross and illiberal attack upon myself, there is one point which I wish most strongly to impress upon the mind of His Excellency, viz., the frequent misrepresentation of the conduct of several of the most deserving Officers in the Regiment which occur in Lieutenant Torckler's letters, fearful lest the character of a corps which has hitherto been distinguished for zeal and discipline in the Men, and for unanimity of feeling and propriety of conduct in the Officers, should suffer in the opinion of those whose praise is honor, and whose censure is disgrace, I intreat His Excellency to attach to this Officer's bare assertions the degree of credit alone to which his own conduct entitles them until proved by that strict enquiry which I most ardently desire; and which I confidently assert would afford general satisfaction to the Officers of the Regiment, impatient as they have long been of the presence of an individual who ever on the watch for disputes on public duty, and in private society, has in a great measure destroyed that confidential and friendly intercourse which formerly existed throughout the corps.

Never has a reference to higher authority been requisite in the case of any Officer of the corps with the exception of Lieut. Torckler, and never until now has the discipline of the Regiment (approved of by all the Officers under whom it has had the honor to serve, and I am proud to say, by His Excellency, himself,) been called in question. Is its reputation then to be aspersed with impunity by one smarting under the punishment due to his offences, and who injured to censure is callous to shame? I trust not, and I sincerely hope that to restore that harmony which has ever pervaded the Regiment, unless when disturbed by Lieut. Torckler, His Excellency will be pleased to remove that Officer ; and the beneficial effects of his absence will quickly appear.

At any rate I trust that His Excellency will perceive the impossibility of Lieutenant Torckler's remaining under my command, as after his decided opinion of me, publicly expressed, it would be folly to expect from him that respect and deference due to me as Commanding Officer of the Regiment in which he is a subaltern.

In justice to Lieutenant Salter the Adjutant, I deem it necessary to append a letter received from him relative to Lieut. Torckler's reflections upon his character and can only say that as far as having authority, from a communication with me in the manner alleged by Lieut. Torckler, the charge is totally false.

Of the two Officers who are mentioned as having authorized Lieutenant Torckler to make certain Statements in his letter, Lieutenant Wilson is absent on General leave, but I have sent for Lieut. Wilcox and have ascertained in the presence of my staff that he did authorize Lieut. Torckler to insert the facts detailed in Paragraph 3 with the exception of a part too trifling to specify here.

To COL. FAGAN,
Adjt Genl. of the Army,
Head-Quarters. }

I have, &c.,
JOHN HOLBROW Major,
Comdg. 4th Regiment N. I.

SERVICE.

No. 9. E.

SULTANPORE OUDE ; 4TH JUNE, 1829.

SIR,

1. In the performance of my duty as Adjutant copying Lieutenant Torckler's letter to the address of Colonel Fagan of yesterday's date, I perceive that Lieutenant Torckler has in the 3d Paragraph made a reflection upon my conduct which if allowed to proceed to Head-Quarters without comment must I fear greatly injure me in the opinion of His Excellency the Right Hon'ble the Commander-in-Chief.

2. It is certainly a very serious hardship that in consequence of my being the Official organ of communication between the Commanding Officer and Lieutenant Torckler I should be subjected to the constant accusations made against me in his public letters. I have never had any personal quarrel with Lt. Torckler but have carefully avoided coming into contact with him from my knowledge of his usual practice of bringing forward private conversation and correspondence in a public manner, however it appears that no prudence can secure a man from the irritating pen of Lieutenant Torckler and I must intreat you to protect my character from suffering in the estimation of my superiors from calumnies which I can only thus repel, and from insults which I am prohibited from resenting:

That I may have spoken to Lieut Wilson of Lieutenant Torckler by name I will not deny, and that I may have said " Well what is Mr. Torckler about now, is he writing any more letters ? " as it was very natural that I should be inquisitive upon a subject which gave me daily trouble and constant employment as Adjutant ; but that I ever intended to use against Lieut. Torckler the information thus obtained, I most solemnly deny, as whatever may be my feelings towards Lieutenant Torckler I have too much self-respect to degrade myself by becoming a contemptible spy, even if you Sir could (which is impossible) so far demean yourself as to require such baseness from me as Lieutenant Torckler insinuates. Lieutenant Wilson being absent on leave I cannot at present avail myself of his testimony as to the facts, and for the purity of my motive I can only appeal to my character in the corps, but it is my intention to write to Lt. Wilson and I shall do myself the honor of submitting his answer to your perusal, as it is very extraordinary that such an opinion of my conduct should have been expressed by a Brother Officer, with whom I have always been upon excellent terms, and who parted from me but a few days ago in the most friendly manner.

To
MAJOR HOLBROW,
Commanding 4th Regiment N. I. }

I have, &c.,
GEORGE SALTER, LIEUT.
Adj. 4th Regt. N. I.

Extract of a letter addressed to Captain Anderson, Dy. Asst. Adj. Genl. Sirhind Division, by Major J. Holbrow Commanding at Loodianah.

SERVICE.

No. 10. E.

LOODIANAH ; 10TH OCT., 1828.

" The Mess of the 4th Regiment has now been established for upwards of 7 years, and during all that time the interference of the Commanding Officer has never once been called for ; on the contrary the utmost harmony and unanimity has always prevailed, during the last four years, I can speak from my own experience and can safely assert that among no body of Officers have I ever witnessed more of true decorous gentlemanly feeling than that which subsists in the Mess 4th Regiment N. I. I will not conceal from the Brigadier General my fears that so desirable a state of society may receive a check from the repulsive and uncourteous manner in which Lieutenant Torckler has forced himself into the Mess. The litigious and quarrelsome disposition of this Officer has made him obnoxious to almost every Officer in the Corps, and the Brigadier Genl. has himself had occasion to animadvert severely upon his conduct. Under these circumstances I cannot without feelings of pain and regret contemplate the possibility of its, being in the power of an individual of this kind to disturb the harmony of a whole Regiment, who with this one exception may be said to live together like Brothers. Considering that the future welfare of the Corps depends in a great measure upon the notice which may be taken of the transactions detailed in this letter I should not have conceived that I was fulfilling the duties of my situation had I abstained from submitting them for the consideration of Brigadier Genl. Adams, c. b., Comdg. the Division.

To CAPT. ANDERSON,
Dy. Asst. Adj. Genl.
Sirhind Division.

I have, &c.,
JOHN HOLBROW, *Commanding,
at Loodianah.*

No. 181.

No. 11. E.

LUCKNOW ; 18TH JUNE, 1829.

SIR,

I have the honor to forward for the consideration of Major General Sir S. Whittingham kt. k. c. b. and k. c. h. Commanding the Division & ultimately for transmission to Head-Quarters the accompanying documents received from Major Holbrow Commanding the 4th Regiment Native Infantry.

After what has been brought to the knowledge of the Major General regarding Lieutenant Torckler of the 4th Regiment N. I. it appears unnecessary to offer any remarks on the matter now forwarded except my regret at being a second time compelled to bring that Officers conduct to the notice of the Right Hon'ble the Commander in Chief under such aggravated circumstances.

To CAPT. MACKINLAY,
Depy. Asst. Adj. General,
CANPORE.

I have, &c.,
W. PATTON, *Brigadier,
Commanding in Oude.*

No. 330.

No. 12. E. CAWNPORE DIVISION HEAD-QUARTERS CAWNPORE; 21st JUNE, 1829.
SIR,

I have the honor to transmit for submission to His Excellency the Commander in Chief a letter from Brigadier Patton C. B., Commanding in Oude with its enclosure- from Major Holbrow Commanding 4th Regiment Native Infantry.

The Charge exhibited against Lieutenant Torckler being founded on Letters of that Officer which accompany it, I have not thought it necessary to direct any proceeding here, and beg to submit the whole matter to the superior consideration and judgment of His Excellency.

To

COLONEL FAGAN,
Adjutant General of the Army.

I have, &c.,

S. WHITTINGHAM, *Major Genl.*
Commddg. Cawnpore Division.

No. 1036.

Adjutant General's Office; Presidency of Fort William, 22d July, 1829.

No. 13. E.

SIR,

I have had the honor of receiving and of laying before the Commander-in-Chief, your letter of the 21st Ultimo, with its enclosures, one of which contains a charge exhibited against Lieutenant Torckler, by his Commanding Officer Major Holbrow.

2. There is in Lieutenant Torckler's conduct of so much personal feeling and irritation, aggravated, perhaps, by the mark of disapprobation by which the Commander-in-Chief recently found it necessary to notice the insubordinate spirit manifested by him, that His Excellency is disposed to ascribe much of his error, on this occasion, to mistaken views of wounded pride, and of misguided sensibility. Rather, therefore, than cause Lieutenant Torckler to be arraigned before a General Court Martial on the charge exhibited against him, and on others, to which his conduct has rendered him liable, it is the Commander-in-Chief's intention to remove him for some time from the 4th Native Infantry; and thus to afford him an opportunity of reflecting on his errors, and on the lenity with which they have been noticed.

3. Should there be any slight imprudencies in Major Holbrow's conduct, which under actual circumstances, and at this distance, may not be obvious to the Commander-in-Chief, His Excellency requests you will call Major Holbrow's attention to them, in the manner you may consider suited to the occasion.

MAJOR GENL. SIR S. WHITTINGHAM,
K. C. B., and K. C. H.,
Commanding Cawnpore Division.

I have, &c.,

C. FAGAN,
Adjt. Genl. of the Army.

No. 1114.

ADJUTANT GENERAL'S OFFICE, PRESIDENCY OF FORT WILLIAM, 27th JULY, 1829.

No. 14 E.

SIR,

I am directed by the Right Hon'ble the Commander-in-Chief to transmit to you the accompanying Extract of General Orders of this date, and to re-

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request that you will direct Lieutenant Torckler, of the 4th Regiment Native Infantry, to proceed to Allahabad to join the 48th Regiment Native Infantry.

To

BRIGADIER R. PATTON, C. B.,
Commanding in Oude }

I have, &c.,
C. FAGAN,
Adjutant, Genl. of the Army.

GENERAL ORDERS BY THE RIGHT HON'BLE THE COMMANDER IN CHIEF.

No. 15. E.

HEAD-QUARTERS, CALCUTTA ; 27TH JULY, 1829.

Lieutenant J. Y. Torckler, of the 4th Regiment N. I., is appointed to do duty with the 48th Regiment N. I., at Allahabad until further Orders.

(True Extract)

C. FAGAN,

Adj. Genl. of the Army.

Correspondence. F.

Connected with Lieut. Torckler's claim to a moiety of the Allowance for Command of his Company withheld from him by Major Holbrow, Commanding 4th Regt. N. I. and the Decision of H. E. the Commander in Chief thereon.

SERVICE.

No. 1 F.

SULTANPORE Oude ; 27TH JUNE, 1829.

SIR,

1 I have the honor to solicit that you will lay the accompanying Copies of letters before His Excellency the Right Hon'ble the Commander in Chief, relative to the established allowance for the command of my company, which I consider to be unjustly withheld from me by order of Major Holbrow, Commanding 4th Regiment, N. I. contrary to the prescribed orders and regulations of government, under date the 1st February, 1829.

2 In respect to the General Order lately issued, directing the established allowance of (50) Fifty Rupees, per mensem, for the "Repair of Arms and accoutrements &c" to be drawn under two distinct heads, viz: (20) Twenty Rupees "for Stationery, repair of Arms, &c." and (30) Thirty rupees, for command allowance, precluded as I am by the orders of the Commanding Officer, from all farther Correspondence, and consequent access to the General Orders, I am unable to ascertain correctly the date and purport of it, and therefore beg permission humbly to submit it to His Excellency the Commander in Chief to decide, whether, in the promulgation of that order, it was contemplated by Government, that the "Command Allowance" should be enjoyed by Officers, entitled to command by their Rank and standing in the Regiment in all situations, except when detached on the Staff, or other employ, as I have understood it formerly to have been

the case, and the allowance for "Stationery, &c." alone retained by the Officer in the absence of Captain and 1 Lieutenant on staff situations or other employ, being myself entitled to a company, the circumstance of being under arrest should affect this, more than any other allowance established by Government, which pending the consideration of my guilt or innocence I am still entitled to draw.

3. In the present instance however, although I was in actual command of my "own Company" for 17 days during the month of April, previous to my arrest, it has been intimated to me by order of Major Holbrow, Commanding the Regiment, in reply to my claim to a moiety of the allowances, that, I am "not entitled to any part of them, as I did not sign the Muster Roll," and in opposition to the regulation of government adverted to in my letter, in support of my claim Major Holbrow, Commanding the Regiment, pleads "the established custom of the Regiment" for arriving at such a decision, "of which" as it is stated in the Adjutant's letter to me, I have "frequently enjoyed the benefit."

4. It is not for me to reconcile the existence of any custom in the Regiment suffered to continue though at variance with the Government Orders, or the disavowal of my claim to a pecuniary reimbursement justified and supported by the highest authority in the country, with the disregard and contempt manifested by the public sanction and support now given to the "Established custom of the Regiment" in direct opposition to the prescribed regulations of government, hereto appended; but, it is with unaffected concern, that I find myself under the necessity of contradicting the assertion of my having "frequently enjoyed the benefit of the custom," which, comparatively with others not excepting Major Holbrow himself, who were constantly from month to month, allowed the indulgence of leave, is not strictly true. Since my joining the Regiment in 1824, the only instances in which I availed myself of leave between Musters, were as follows: In the month of March, 1826, on a case of urgent necessity for 3 or 4 days in the month of March and for 10 days in the month of May, 1827, and during the month of November, 1827; in all which, I of course benefited in common with others by the custom of the Regiment, no order then existing to the contrary, but since the receipt of the Government Order, of the 1st February, 1828, I have not been absent from the Regiment for more than 4 days in the month of May 1828, and 12 days in February last; in neither of which instances or in any other that might have occurred, should I have, for a moment, thought to urge "the Established Custom of the Regiment," virtually cancelled by the first Government Order subjoined, as a plea for refusing to refund a due portion of the allowances, in direct opposition to the regulation on the subject, established and approved by order of the Governor General in Council: on the contrary, I can call upon the Officer who was in charge of my Company, to state, if he did not receive the whole of the Allowances for the period of my absence in the latter case; and in the former, had the claim been made, I should have "considered myself bound" to acquiesce in the superseded Officer, for even that small dividend.

5. Further the present decision of Major Holbrow, Commanding the Regiment, is directly the reverse of the sentiments he was heard publicly at the Regt. a few months since to express, when an indifferent person was concerned, on

the occasion of it being contemplated that he would claim the allowance of the Company of an Officer who was about to proceed on leave, when, in reply to the observations of some one respecting "the established custom of the Regiment," I understood Major Holbrow to state as his opinion, that in such an event it must come to the superior authority of the Regulations, so that, I can only regard this as a fresh instance of the violent prejudice and ill will to myself, and the partiality and favor to others by which Major Holbrow, Commanding the Regiment, seems to have been influenced in almost every case which he has had to decide, between me and others but sacred, as is at all times held any personal allowance established by Government, and universally, as the peculiar hardship of an unjust retrenchment, or any unnecessary delay in the consideration of a pecuniary claim is felt and acknowledged I did expect that a case, supported by the authority of the Governor General in Council, would have met with attention, or at least with a more courteous reply than has been vouchsafed me on the present occasion.

TO LIEUT COL COMDT. FAGIN,
Adjutant General of the Army,
 &c. &c. &c.
 HEAD QUARTERS

I have, &c ,

W. Y. TORCKLER, *Lieut.*
4th Regiment N. I.

EXTRACT OF GOVERNMENT ORDERS, 1st FEB., 1828.

"With reference to Government Orders, No. 199, of 1827, the Right Honorable the Governor General in Council, is pleased to direct, that, pending the preparation of a complete Code of Regulations on the subject of Military establishments, the forms, tables and Rules, contained in the following Orders, shall be adopted in lieu of those now in use, and shall have effect from the first of the month succeeding that in which copies of the work are received at Stations and Corps respectively. All former Orders, Regulations or decisions at variance with those herein published, are to be considered as cancelled from the same date."

Extract Established Allowance for the Command "of Companies"

Rule 1st "Always to be drawn by the Officer in actual charge on the ensuing Muster, who is however bound to account (in the same manner as Regimental Staff Officers do) to the relieved or superseded Officer, for a portion of the Allowance (after deducting the necessary expenses) up to the date on which the relief or supersession may have taken place."

(True Extract,)

W. Y. TORCKLER, *Lieut.*,
Lieut. 4th Regiment Native Infantry.

SERVICE.

No. 2. F.

SULTANPORE OUDE ; 25TH JUNE, 1829.

SIR,

I have the honor to acquaint you for the information of the Commanding Officer that the Officer in charge of my Company has not as yet accounted, in

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for the established Allowances of the Company for the Month of April last, in conformity to the Regulations of Government, although the Pay and Allowances for that month, were issued to the troops at the Station on the 12th instant.

To LIEUT. SALTER, } I have, &c,
Adjt 4th Regiment N. I. } W. Y. TORCKLER, Lieut.
4th Regiment N. I.

No. 782

No. 3. F.

SULTANPORE OUDE ; 26TH JUNE, 1829.

SIR,

In reply to your letter of yesterday's date, I am directed by the Commanding Officer, to intimate to you, that in conformity with the established custom of the Regiment, of which you have frequently enjoyed the benefit, you are not entitled to any part of the Allowances of the Company for the Month of April, as you did not sign the Muster Roll

I am further ordered to request, that you will abstain as much as possible from all correspondence with me on Regimental matters until you are released from arrest, when the Commanding Officer will pay due attention to any claim, which you may wish to bring to his notice

Your letter to Captain Clayton, of this day's date, with the extract of Retrenchment will be duly forwarded.

To LIEUT. TORCKLER, } I have, &c,
4th Regt N I } GEORGE SALTER, LIEUT.,
Adjt. SULTANPORE. } 4th Regt. N. I.

SERVICE.

No 4. F.

SULTANPORE OUDE ; 27TH JUNE, 1829.

SIR,

I have the honor to request that the accompanying letters may after submission to Major Holbrow, Commanding the Regiment be transmitted with his permission to the Head-Quarters of the Army, through the prescribed channels and that you will favor me with an acknowledgment of the due receipt and dispatch of the same, as early as convenient.

To LIEUT. SALTER, } I have, &c.
4th Regiment N I } W. Y. TORCKLER, LIEUT.
Sultanpore Oude. } 4th Regiment N. I.

SERVICE.

No. 783.

No. 5 F.

SULTANPORE OUDE ; 28TH JUNE, 1829.

SIR,

In returning the accompanying papers the Commanding Officer, again desires you to refrain from all correspondence on the subject until you are released from arrest ; when it can be investigated and settled by verbal communication without affording you a pretext for a litigious correspondence.

Never could the Commanding Officer have sanctioned the intrusion, of such a lengthened statement upon the time and attention of His Excellency, more especially after the repeated references from the Regiment on your account which have so lately caused so much annoyance to your superiors.

Expressing his surprise at your persisting in such a systematic contempt of his authority, Major Holbrow warns you to beware how you incur the serious penalty of disobedience of Orders.

To

LIEUT. W. Y. TORCKLER, }
4th Regiment N. I. }
SULTANPORE OUDE.

I have, &c.,

G. SALTER, *Lieut.*
Adjutant,
4th Regiment N. I.

SERVICE.

No^r 6. F.

SULTANPORE OUDE ; 27TH JUNE, 1829.

SIR,

1. In submitting the accompanying letter to the address of the Adjutant General of the Army, for the consideration of Brigadier Patton, C. B., Commanding the District, I beg you will express my extreme regret, that in consequence of Major Holbrow, Commanding the Regiment, having declined to forward it (with reference to the Adjutant's letter to my address of the 23th June annexed) I am placed under the disagreeable necessity of doing so myself, as the subject I submit is of serious importance, not only to myself individually, but to the interests of the Army at large.

2. It is with sincere concern that I understand from the Adjutant's letter to my address of the 28th instant, that any part of my conduct should have caused annoyance to my superiors, but I beg totally to disavow all intention, on the present, or any former occasion, of seeking a pretext for a litigious correspondence and would rather that no ground had been afforded me now for an appeal to the interference of His Excellency the Commander-in-Chief; In whatever steps I have taken I have been solely guided by conscientious, though perhaps erroneous notions of my duty to the public Service more than to my own private interests.

3. In the present case, I would gladly consent to await the further investigation of the matter, until my release from arrest, did it not relate solely to my pecuniary Interests, and the injustice incurred by me through the stoppage of a part of my personal allowances established by Government, without competent authority, there being no Regulation of the Service, that I am aware of, which affects the due receipt of my full pay and allowances whilst under arrest merely; and, had not Major Holbrow, Commanding the Regt. being in possession of the whole of the particulars on the subject, already decided on it, and disallowed my claim although supported by the Regulation of Government.

4. In explanation of whatever part of my conduct may appear to have been wanting in respect to Major Holbrow, Commanding the Regiment, I have to state, for the information of His Excellency the Commander-in-Chief, that independent of this and other acts of injustice and oppression which I have experienced and am prepared to substantiate on my trial, I have witnessed instances of low and disgustingly indecent familiarity on the part of Major Holbrow, in pub-

lie with Junior Subalterns of the Regiment, whilst still in mourning for his wife whom he had scarcely buried six (6) months; and that, on one occasion, at the Card Table in the Mess Room, Major Holbrow, having united in gambling, contrary to the Orders of the Commander-in-Chief, to an extent by which I was a considerable sufferer, and himself, I believe, one of the principal winners, did permit a Captain of the Regt. to address him in a violent tone and manner, throwing down the cards, with the following insulting terms: "then I'll be damned, Major Holbrow, if I'll play any longer," or words to that effect, without taking any notice of the matter that I am aware of, or that, on inquiry, I have been able to ascertain from the party who witnessed the transaction as well as my self.

5. These remarks, which I had intended to have reserved for another and more important occasion, have been now drawn from me, in consequence of the last paragraph of the Adjutant's letter accusing me of evincing contempt for the authority of Major Holbrow; this I am not aware of having done on the present occasion, though I confess the above circumstances have materially tended to diminish that respect and esteem which is due to the Commanding Officer, and would now have been communicated in the prescribed manner, through the Adjutant, were I not by the same letter so strictly prohibited from any further correspondence with him.

6. I have to request that this letter or an attested copy of it may accompany my letter to the Head-Quarters of the Army.

To CAPT. SMALPAGE,
Major of Brigade,
&c. &c. &c. }
LUCKNOW. }

I have
W. Y. TORCKLER, Lieut.
4th Regt. N. I.

No. 195.

No. 7 F. Oude Brigade Office; Lucknow, 3d July 1829.

SIR,

The enclosed documents received from Lieutenant Torckler of the 4th Regiment, are transmitted to you by order of Brigadier Patton, C. B. Commanding the District, for the purpose of being returned to that Officer; and you are requested to inform Lieutenant Torckler, that, pending the question now before His Excellency the Commander in Chief, the Brigadier does not deem it expedient to forward any further reference from him to Head-Quarters.

Adverting to the reason assigned by you, for not admitting Lieutenant Torckler's claim to the allowances of the Company, for that part of the month of April in which he was actually in charge; I am instructed to remind you, that no established custom of a Regiment at variance with the Regulations of the Service, ought to exist, and as the Orders of Government of the 1st of February, 1828, expressly decide the question at issue, in favor of Lieut. Torckler, Brigadier Patton, C. B. considers that Officer is clearly entitled to it's benefits, and consequently to a proportion of the allowances of the Company he Commanded for a part of the Month of April last.

To MAJOR HOLBROW,
Comdg. 4th Regt. N. I. }
SULTANPORE. }

I have, &c.,
J. SMALPAGE,
Major of Brigade, Oude.

No. 786.

No. 8. F. SULTANPORE OUDE; 6TH JULY, 1829.

SIR,

I am directed by the Commanding Office to enclose the accompanying letters, together with the copy of one received from Captain Smallpage, and to acquaint you that in conformity with the decision of the Brigadier, Orders have been issued to account to you for the allowances claimed.

To LIEUT. TORCKLER,
4th Regt N. I.
SULTANPORE. }

I have, &c.,
Geo. SALTER, LIEUT.,
Adj't 4th Regiment N. I.

SERVICE.

No. 9. F. SULTANPORE OUDE; 6TH JAN, 1829.

SIR,

In reply to your letter of this day's date, which with the enclosures, deeming it of the utmost importance for myself, to bring to the immediate notice of His Excellency the Commander-in-Chief I must beg leave respectfully to decline receiving any part of the allowance for the Command of my Company, hitherto withheld from me by order of Major Dobson Commanding the Regiment, until the pleasure of His Excellency is known on the subject.

To LIEUT. SALTER, ADJT
4th Regt. N. I.
SULTANPORE. }

I have, &c.,
W. Y. TORCKLER, LIEUT.,
4th Regt. N. I.

No. 10. F. SULTANPORE OUDE; 6TH JULY, 1829.

SIR,

In returning the enclosed letter, which I have had the honor to receive from you I have to acquaint you, with reference to my letter to the Adjutant's address of this day's date, that I have declined to receive any part of the allowance, hitherto withheld from me, pending the further consideration of the subject, or until the pleasure of His Excellency the Commander-in-Chief is known.

To
CAPTAIN CALEY,
Late in charge of 6th Compy.
4th Regiment N. I. }

I have, &c.,
W. Y. TORCKLER,
Late in Charge 6th Company,
4th Regt. N. I.

No. 11. F. SULTANPORE OUDE; 6TH JULY, 1829.

SIR,

In returning the enclosed letter which I have had the honor to receive from you, I have to acquaint you, with reference to my letter to the Adjutant's address of this day's date, that I have declined to receive any part of the allowance hitherto withheld from me, pending the further consideration of the subject, or until the pleasure of His Excellency the Commander-in-Chief is known.

To
LIEUT. WILCOX,
Late in charge of 2d Company,
4th Regt. N. I. }

I have, &c.,
W. Y. TORCKLER, LIEUT.,
Late Comdg 2d Compa
4th Regiment

(: LXXXVII)

SERVICE.

No. 12. F.

SULTANPORE OUDH ; 7TH JULY, 1829.

SIR, •

The accompanying documents having been returned by order of Brigadier Patton C. B., Commanding the District, and it having been communicated to me through a copy of a letter annexed from the Major of Brigade that the Brigadier does not deem it expedient at present to forward them to Head-Quarters, in conformity with the prescribed usage of the Army I venture to submit them through you to the consideration of Major Genl. Sir S. Whittingham, Comdg. the Division, with the hope, that the importance of the questions to which they relate, whether as they affect the pecuniary Interests of the Army at large, and the power of Commanding Officers to withhold from Officers under their Command, at their own pleasure and without competent authority, the due payment of the allowances established by Government, or the particular injustice experienced by me as an individual on this occasion, will induce the Major General Commanding the Division, to direct their being transmitted without further delay for submission to His Excellency the Commander-in-Chief.

To

CAPT. MACKINLAY,
Dy. Asst. Adj. Genl.
&c. &c. &c.,
Cawnpore. }

I have, &c.,

W. Y. TORCKLER,

4th Regiment N. I.

COPY.

No. 386!

No. 13. F. DEPY. ASSIST. ADJT. GENL'S. OFFICE; Cawnpore, 11th July 1829.

SIR,

I have the honor by direction of Major General Sir S. Whittingham Commanding the Division, to transmit for your perusal, a letter to my address from Lieutenant Torckler, 4th Regiment together with its enclosures.

The language used by Lieutenant Torckler, respecting his Commanding Officer, particularly in his letter to your Major of Brigade, is so highly improper, that the Major General considers it will be an act of justice to Major Holbrow, to forward the communication to Head-quarters for submission to His Excellency the Commander in Chief, that His Excellency may be enabled to give orders on the subject, and I am desired to request that you will acquaint Major Holbrow with his opinion, in transmitting to him the papers, that he may have an opportunity of making any remarks he may wish to offer, to be submitted at the same time.

To

BRIGADIER PATTON, C B.,
Commanding in Oude. }

I have, &c.,

J. H. MACKINLAY,
Depy. Asst. Adj. Genl.

SERVICE.

No 14. F.

SULTANPORE OUDE ; 16TH JULY, 1829.

SIR,

In compliance with the wishes of Sir S. Whittingham, Kt. K. C. B. K. C. H. Commanding the Division, expressed in your letter of the 11th Instant, to Brigadier Patton, C. B., Commanding in Oude, I have the honor to return the accompanying papers for transmission to Head-Quarters, availing myself of the opportunity afforded me to make the following remarks

2. Adverting to the base insinuations against me contained in the 4th Para. of Lieutenant Torekler's letter to the Major of Brigade, Lucknow, I am unable to comment upon them until the accusations assume a specific form, as from the extremely vague and general terms in which they are at present couched, and from my total ignorance of the persons and circumstances to which they allude, I cannot now refute them. Any remarks upon the indelicacy and ungentlemanly conduct of Lieutenant Torekler in referring to my domestic afflictions in his public letter, I consider superfluous, convinced as I am that every Officer and gentleman will conceive and participate in my feelings on the subject.

3. With regard to the charge of my having allowed myself to be addressed in a disrespectful manner by an Officer under my Command, without noticing such conduct, it is a false and malicious assertion, as the Officer in question waited upon me in person early the following morning for the purpose of expressing his regret at having been betrayed into such hasty language; and as to the gambling in which Lieutenant Torekler has accused me of having joined, if playing for a most trifling stake to amuse myself and others be improper, I must own that I have engaged in what I had hitherto considered an innocent pastime.

4. For this Officer's perseverance in his vexatious and malicious misrepresentations, I can only account by supposing that smarting under his late punishment, and from his subsequent misconduct despairing of being permitted to remain in the Service, he is endeavouring to injure my character by his slanderous attacks, and to goad me to commit myself by descending to the violent and ungentlemanly tone which characterizes his own Correspondence.

5. Lieutenant Torekler having omitted to forward a Copy of the Regimental Order issued immediately upon receipt of the decision of Brigadier Patton in his favor, I have the honor to append it together with the Copy of a letter to the Brigadier respecting Lieutenant Torekler's conduct in consequence.

To CAPT. MACKINLAY,
Depty. Asst. Adj. General,
CANNPORE.

I have, &c.,
JOHN HOLBROW, Major,
Comdg. 4th Regiment N. I.

Extract of Regimental Orders by Major John Holbrow, Commanding 4th Regt N. I.

No 15. F.

SULTANPORE OUDE ; 6TH JUNE, 1829.

In obedience to instructions from Brigadier Patton, C. B., Commanding the District, the Officers who received the allowances of the 2nd and 6th Compa-

nies for the month of April last will be pleased to account to Lieut. Torckler for that part of the month in which he was actually in Charge of the respective Companies : and in future Officers Commanding Companies who draw the allowances, will account to the relieved or superseded Officers for the number of days that they were in actual Charge of the Company in conformity with the Orders of Government of the 1st of February, 1828.

(True Extract,)

GEO. SATER,

Lieutenant Adjutant.

COPY.

No. 787.

No. 16. F. SULTANPORE OUDE ; 7TH JUNE, 1829.

SIR,

I have the honor to acquaint you for the information of Brigadier Patton, C. B., Commanding the District, that in obedience to the instructions contained in your letter of the 3rd Instant, I yesterday issued the Regimental Orders respecting the Staff allowance of Companies, a Copy of which is herewith forwarded ; but as you will perceive by the accompanying correspondence, Lieutenant Torckler has refused to abide by the decision of the Brigadier in his favor, and persists in transmitting to Head-Quarters, the letters on the subject in one of which he has thought proper to allude to my domestic misfortunes in a manner which no gentleman could demean himself by adopting. I must however smother my feelings on this subject until the proper opportunity occurs for expressing them, but I beg that you will report to Brigadier Patton that Lieut. Torckler appears resolved to set at defiance my orders communicated to him by letter and in the Order Book, and that I find it utterly impossible to prevent him from intruding his annoying references upon the consideration of superior authority.

To

CAPT. SMALPAGE,
Major of Brigade,
&c., &c.,

Lucknow,

I have, &c ,

JOHN HOLBROW, Major,
Comdg. 4th Regiment, N. I.

No. 404.

No. 17. F. CAWNPORE DIVISION HEAD-QUARTERS ; CAWNPORE ; 23d JULY, 1829;

SIR,

I have the honor to transmit to you, for submission to His Excellency the Commander-in-Chief, a correspondence connected with the case of Lieutenant Torckler 4th Regiment Native Infantry.

The enclosed packet from Lieutenant Torckler having been received direct from that Officer, I considered it due to Major Holbrow, that it should be forwarded to you, with any remarks he might wish to make upon the accusations brought against him ; indeed I felt convinced, that if I had rejected it, it would be transmitted to you direct, as it had been to this place, when returned by Brigadier Patton, C. B. Commanding in Oude, and much time would have been lost in returning it here, to be accompanied by Major Holbrow's observations.

(XC)

I therefore directed it to be sent to Brigadier Patton, with a letter of which the annexed is a copy, and it has been returned by that Officer, with a letter from Major Holbrow, which with its enclosures accompanies this.

May I request, that in transmitting any charges which may be framed against Lieutenant Torckler you will have the goodness to return the documents upon which they are founded, that they may be delivered to the Officer appointed to conduct the trial.

To COLONEL FAGAN,
Adjutant General of the Army. }
&c. &c. &c.

I have, &c.,
S. WHITTINGHAM, Major Genl.
Comm'dg. Cawnpore Division.

No. 821.
SERVICE.

No. 18 F. SULTANPORE OUDE; 29TH AUGT., 1829.
SIR,

By order of the Commanding Officer I have the honor to enclose the accompanying copies of letters received this morning.

To LIEUT TORCKLER,
4th Regiment N. I. }

I have, &c.,
GEO. SALTER.
Lieut. Station Staff.

No. 487.

COPY.

No. 19. F. DEPY. ASSIST. ADJT. GENL'S. OFFICE; Cawnpore; 25th Aug. 1829.

SIR,

I have the honor by direction of Major General Sir S. Whittingham Commanding the Division, to annex for your information, and for communication to the parties concerned, a copy of a letter from the Adjutant General of the Army, of the 13th Instant, No. 1303.

To BRIGADIER PATTON, C. B., }
Commanding in Oude.

I have, &c.;
J. H. MacKINLAY,
Depy. Asst. Adj. Genl.

No. 1303.

No. 20. F. ADJT. GENL'S. OFFICE; Presidency of Fort William; 13th Aug., 1829.

SIR,

I have the honor to acknowledge the receipt of your letter of the 23d Ultimo, transmitting further Correspondence connected with the case of Lieutenant Torckler, of the 4th Regiment Native Infantry, and with a claim preferred by that Officer to the allowance of his Company, during the period he was under arrest, which has been submitted to the Commander in Chief.

2. In reply, I am directed by His Lordship to acquaint you, that he regrets that Lieutenant Torckler was not satisfied with the decision given by Brig.

dier Patton, in Captain Smalpage's letter of the 3d of July last, particularly as that decision was favorable to him; and the Commander in Chief considers his persisting to force the matter on his Lordship's attention, could only have arisen from a desire to bring some parts of his immediate Commanding Officer's conduct under the notice of the Commander in Chief.

3. His Lordship is at present unwilling to pass any further censure on Lieutenant Torckler's conduct; but trusts that the leniency which has been recently shewn to that Officer, will prevent his following so reprehensible a line of conduct in future.

To
Major General Sir S. Whittingham,
K. C. B., Commandg. the Cawnpore Divn }

I have, &c.,
C. FAGAN,
Adjutant General of the Army.

Correspondence.

As connected with the transactions of the 19th July and 9th August, 1829, also with the trial of Lieutenant Torckler before this General Court Martial.

No. 1. G.

SULTANPORE OUDE; 8TH AUG., 1829

SIR,

1. Previous to quitting the Regiment in obedience to the order communicated to me this day, I find myself under the necessity of soliciting the attention of Major Holbrow, Commanding the Regiment, to a circumstance that was submitted to him, on or about the 20th Ultimo, involving the most serious imputation on my character as an Officer and a Gentleman, and which I was precluded from doing at an earlier period, being at the time in arrest, and in consequence of the warning Major Holbrow, Commanding the Regiment, was pleased to convey to me through Lieutenant Wilcox, of the Regiment.

2. I now therefore lose no time in begging respectfully, to know the sentiments of the Commanding Officer on the conduct of the 5 Officers concerned in regard to myself, in causing a message of a most insulting nature to be communicated in my presence to my Brother-in-law, Lieutenant Wilcox, of the Regiment, thereby reviving, for no purpose that is apparent to me than that of casting an indelible Stigma on my character, by impugning my honor and courage on the occasion, a transaction, which (whatever was the nature of it) took place upwards of a twelve month since, was discussed and decided on by Major Holbrow, Commanding the Regiment himself, by Lieutenant Colonel Stewart, then Commanding the Station of Loodiannah, and finally adjusted by Brigadier General Adams, C. B., Commanding the Sirhind Division, to the expressed satisfaction of both parties concerned, the Correspondence on the subject being withdrawn and destroyed by their mutual consent.

3. I am now desirous to ascertain if it is the intention of Major Holbrow Commanding the Regiment to take any, and what notice of the unwarrantable behaviour of the Officers concerned, who, after wantonly conveying to me a

gross and unjustifiable insult through a private channel, when called upon to account to me through a similar medium, thought fit to submit the affair, though strictly private, for the information of the Commanding Officer, thereby avoiding the possibility of all further private discussion: delicacy (in my cooler moments) has suggested to me the propriety of adopting these steps in preference to having recourse to the measure of publishing the conduct of the five Officers to the army at large, which my exasperated feelings at the time led me to threaten I would do.

4. I beg to be favoured with an early reply, as in event of Major Holbrow, Commanding the Regiment declining to interpose his authority in rendering me ample redress, it is my purpose to postpone any further steps it may be advisable for me to take until after my joining the 43th Regiment N. I. at Allahabad.

To
LIEUT. GEORGE SALTER, ADJT.
4th Regt. N. I. }

I have, &c.,
W. Y. TORCKLER, LIEUT.,
4th Regt. N. I.

No. 801:
SERVICE.

No. 2. G.
SIR,

SULTANPORE OUDE; 8TH AUGT, 1827.

I am directed by the Commanding Officer to return the enclosed letter, and to acquaint you that, after the District and Regimental Orders issued to-day, no further communications can be received from you.

To
LIEUT. TORCKLER,
4th Regt. N. I. }

I have, &c.,
GEO. SALTER, LIEUT.
Adj't 4th Regiment N. I.

SULTANPOOR; 18TH JULY,

Lieut. Wilkie presents his compliments to Lieutenant Torckler, and having understood that he called at his house during his absence he begs leave to inform Lieutenant Torckler that he declines having any communication either personally or verbally "unless of a public nature" with Lieut. Torckler.

2.
MY DEAR WILKIE,

I am requested by Lieutenant Torckler to state that he solemnly avows that in the affair with Lieutenant Goldney, alluded to by yourself and three other Officers of the Corps conveyed through Ensign Becher, as an objection to his acting as my friend in the field, Lieutenant Torckler solemnly avows that however indiscreetly and unadvisedly he may have acted in it, he was not influenced by any motives of timidity, as he is willing now to prove by giving Lieutenant Goldney, yourself, and the other three Officers, instant instant satisfaction, and unless they consent to this, he will post you all four as cowards and blackguards throughout the whole army.

Yours Sincerely,
(Signed) T. WILCOX.

3.
MY DEAR WILKIE,

I am further requested to remind you, Captain Wilton, Lieutenants Oldfield, Goldney and Salter, that the affair between Lieutenants Torckler and Gold-

ney was finally settled, the "Correspondence" being "*withdrawn*" or *both sides* & "*destroyed*" and "*both parties*" expressing themselves "*satisfied*" and now remain *strictly private*. Lieutenant Torekler considers himself to have been most grossly insulted in the opinion conveyed by you all through Ensign Becher, is surprised at the delay that has now occurred in replying to my first note, and demands immediate satisfaction.

Yours Sincerely,

(Signed) T. Wilcox.

N. B.—The above was returned to Lt. Wilcox with the following note.

Lieut. Wilkie acquaints Lieut. Wilcox that he has, as he warned him he should do, shown the note brought to him to the Officers, concerned who are of opinion that the Document is of such a nature as to render it impossible for them to allow Lieut. Wilkie to claim the pledge of ^{fulfil} ^{promise} not making it public into which he was inadvertently surprized.

Sultanpore, 19th July, 1829.

Lieut. Wilkie is requested by the Officers, ~~all~~ ^{asked} to state that unless a most ample apology for writing and being the bearer of that paper be forwarded by him to Captain Wilton without delay, the whole will be immediately laid before the Commanding Officer.

SULTANPORE OUDE; 19TH JULY, 1829.

Lieutenant Wilcox regrets that he should have been the bearer of a paper containing any thing of an offensive nature to Lieutenant Wilkie and four other Officers of the Corps on the behalf of Lieutenant Torekler, which on due reflection he is fully sensible of and apologises for the same, and begs that the letter may be returned to him.

N. B.—This apology was returned to Lieutenant Wilcox by Lieutenant Wilkie on the morning of the 20th July with a note from Lieut. Wilkie informing him that the matter would be submitted to the Commanding Officer.

SULTANPORE OUDE; 20TH JULY, 1829.

Lieutenant Wilcox regrets extremely that he should have been so far led away by his youth and inexperience as to have written, or have been the bearer of a Paper containing such offensive and insulting language from Lieut. Torekler to Lieutenant Wilkie and four other Officers of the Regiment; any intention on his part to insult or give offence he totally disavows, and Lieutenant Wilcox will ever feel sensible of the lenity shewn by Lieutenant Wilkie and the other four Officers, and now once more begs that the note in question may be returned.

(Signed) T. Wilcox, Lieut.

4th Regiment.

The above was sent by Major Holbrow, to Captain Wilton.

SULTANPORE OUDE; 20TH JULY, 1829.

MY DEAR MAJOR,

I have submitted the apology to the Officers concerned, and at your request they have consented to accept the apology from Lieutenant Wilcox, and they only hope, that that Officer will never give them cause to repent, that they

^e Thus interlined in the original.

have not had recourse to such measures as would effectually have prevented a repetition of his offence.

Yours Sincerely,
G. R. WILTON

SULTANPORE OUDE ; 21st JULY, 1829.

" Major Holbrow, I totally disapprove of this letter and the Proceeding altogether, as it was written contrary to my advice, and I have since yesterday declared I will have nothing further to say to it,"

This was taken down the moment Lieutenant Wilcox quitted the Commanding Officer's Bungalow, and to the best of our recollection is perfectly correct.

JOHN HOLBROW, Major,
4th Regt. N. I.
F. H. CALEY, Capt.
4th Regt. N. I.

No. 802.

SERVICE.

No. 3. G.

SULTANPORE OUDE ; 9th AUGUST, 1829.

SIR,

1. I have the honor to report to you for the information of Brigadier Patton, C. B. Commanding in Oude, that I have been compelled to place in confinement and under the charge of an European Officer, with an Armed party, Lieutenant Torckler, of the 4th Regiment Native Infantry, for an offence, of so serious a nature that I most anxiously await the Orders of the Brigadier upon the subject.

2. The Accompanying Copies of depositions made before me, and Captain Caley, of the 4th. Regiment Native Infantry, will fully prove the necessity of adopting the above severe measures ; and of so much importance do I consider the Charges made against Lieutenant Torckler, that I have taken the liberty of forwarding the Original documents direct to Head-Quarters for the consideration of his Excellency the Right Honorable the Commander-in-Chief.

To CAPT. HAMILTON,

Offg. Major of Brigade,

LUCKNOW,

I have, &c.

JOHN HOLBROW, Major,

Commandg. at Sultanpore;

No. 228.

No 4. G

LUCKNOW 11th AUGUST 1829.

SIR,

I have the honor to forward the accompanying papers, this day recieved by express from Major Holbrow Commanding 4th Regiment Native Infantry, for the purpose of being submitted to the Major General.

I should have been more satisfied had Major Holbrow instituted a Court of Enquiry to investigate the affair, but as the original Documents have been already forwarded to Head Quarters and the Circumstances of the transaction appearing of such a nature as to render a Court Martial unavoidable, I conceive that any interference on my part would be unnecessary.

To

CAPT. MACKINLAY

De. Asst. Adj. Genl.

I have, &c.

W. PATTON, Brigadier.

Commanding in Oude.

(XCV)

No. 803.
SERVICE.

No. 5. G.

SULTANPORE OUDE; 9TH AUG, 1829.

SIR,

1. I have the honor to request that you will submit for the consideration and orders of His Excellency the Right Honorable the Commander-in-Chief, the accompanying depositions made before me and Captain Caley, of the 4th Regiment Native Infantry, containing a most serious accusation against Lieutenant Torckler of the 4th Regiment Native Infantry, who was yesterday ordered to proceed to join the 48th Regiment Native Infantry at Allahabad, but in consequence of the above-mentioned depositions and of the enclosed affidavit by Lieutenant Goldney of the 4th Regiment Native Infantry, I have deemed it my duty to place Lieutenant Torckler in close confinement under the charge of an armed party Commanded by an European Officer; which measures I have accordingly adopted.

2. I have reported the affair, forwarding Copies of the depositions and affidavit to Brigadier Patton, C. B., Commanding the District, and have requested instructions from him for my immediate guidance, but I have deemed the matter of so much importance as to require this report of it direct for the information of His Excellency.

To

COLONEL FAGAN,
Adj. Genl. of the Army.
Head-Quarters.

I have, &c,

JOHN HOLEROW, Major,

Comdg. 4th Regiment, N. I.

LIEUTENANT GOLDNEY'S AFFIDAVIT.

No. 6. G.

SULTANPORE; OUDE; 9TH AUG 1829.

I Philip Goldney of the 4th Regiment Native Infantry, do make Oath and declare that Lieutenant W. Y. Torckler of the said Regiment, did come into my Quarters this morning, between the hours of 8 and 9, o'Clock with loaded fire-arms, and did there discharge the said fire-arms with the intention as I firmly believe of taking away my life; and still do verily believe that my life is in danger from the above Lieutenant W. Y. Torckler of the 4th Regiment, unless he be kept in strict and due restraint.

PHILIP GOLDNEY,

Lieut. 4th Regt. N. I.

Sworn before me this 9th day of August, 1829.

In presence of

H. F. CALEY, Capt.

4th Regt. N. I.

JOHN HOLEROW, Major,

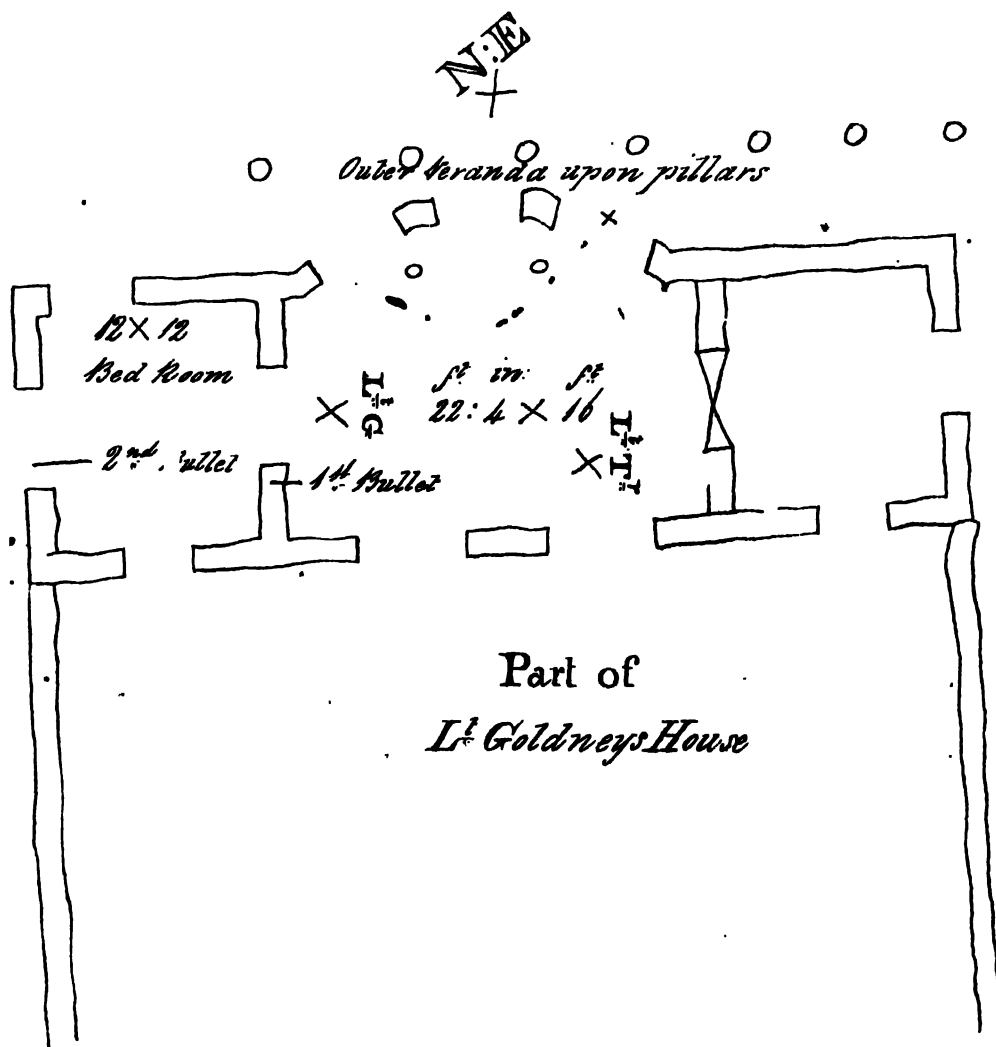
Comdg. at Sultanpore.

No. 7. G.

Lieutenant Goldney's statement 9th Augt. 1829:*

Between eight and nine o'Clock this morning I was told by my bearer (as I understood him) that Dr. Leese was waiting for me, I went out of my bed room and saw Mr. Torckler: He began to address something to me when I interrupted him by saying "I thought it was the Doctor; leave my house Mr. Torckler I can have nothing to say to you" I repeated this conducting him to the verandah; where he stopped and produced a note, I said leave my house, Sir, Produced by Lieutenant Torckler, and admitted by Lieutenant Goldney, in Court, to be authentic.

*Facsimile of the Plan drawn by Lieut^t
Goldney & admitted by him in Court (vide
Page 66)*



N. B. The above Facsimile, struck off at the Asiatic Lithographic Press, is accurately described in every respect as in the original, excepting the *handwriting* of Lieutenant Goldney in the body of the Plan, which has not been correctly imitated.

W. Y. TORCKLER.

and upon his refusing and seizing my arm I retired back into my bedroom and close the doors. Lieutenant Torckler pulled them open when taking a pistol from under my pillow I said "very well, Sir, if you will not leave my house---" at these words Lieutenant Torckler who had recoiled two or three paces on seeing the Pistol shewed a brace of pistols one of which he instantly discharged at me, upon this I pulled my trigger but my pistol miss'd fire and immediately Mr. Torckler discharged his second Pistol at me, I instantly rushed upon him and threw him down: he fell upon my couch and I upon him, a crowd of people rushed upon us both, and I felt myself grasped by a man a stranger to me; upon extricating myself and imagining that it was a Servant of Mr. Torckler's that had siezed me, I concluded that he had brought a number of people with him and immediately left the house for Major Holbrow's protection, I have since been told that the person who grasped me, is a Sepoy of the 3rd Company who was passing at the time, and hearing the noise, came in and endeavoured to separate Mr. Torckler and myself.

Mr. Torckler was about five or six yards from me, when he fired at me and I verily believe that I owe my life to his stepping back upon seeing a pistol in my hand; my reason for imagining that it was Dr. Leese who had called on me at that hour is that I had been a little unwell the preceding evening, and the native pronunciation of "Torckler Sahib" and "Doctor Sahib" is nearly the same to the best of my recollection Mr. Torckler's words when he pulled out his note were "if you do not acknowledge, that I have offered you the satisfaction of a Gentleman."

Memorandum,

(True Copy,)

P. GOLDNEY.

The original sent to the C. C. is accompanied by depositions of two of my servants corroborating this statement.

No. 8. G.

STATEMENT OF JEWIYR BEARER

Jewiyr Bearer in the service of Lieutenant Goldney states that he saw Lieutenant Torckler, coming wrapt up in a cloak about 8 A. M. he immediately gave information to his Master, who got up, on Lieutenant Torckler entering the room, he offered a chit to my master (Lieutenant Goldney) who refused to take it, and after a few words had passed, he desired me to turn him out, on which Lieutenant Torckler pushed me on one side, and fired at my master as he was retiring into another room, my master immediately closed part of the door, when Lieutenant Torckler fired another pistol; after this my master and Lieutenant Torckler had a struggle, but the servants parted them, when my master ran over to Major Holbrow's Bungalow.

Taken before us, this 9th day of Aug. 1829.

JOHN HOLBROW, Major,
Comdg. at Sultanpore.

H. F. CALEY, Capt.
4th Regt. N.

No. 9. G. STATEMENT OF SHAIK BUDDOO KIDMUTGAR.

Shaik Buddoo Kidmutgar in the service of Lieutenant Goldney states that he was standing in his Master's Room between the hours of 8 and 9 A. M. when Lieutenant Torckler entered wrapt up in a large Cloak and offered a chit to his Master (Lieutenant Goldney) who refused to take it, and retired into another room, closing half the door after him, which Lieutenant Torckler opened and fired two Pistols at him, one Ball lodged in the Wall, and one went through the door opposite to the one which my Master closed. My Master had a Pistol in his hand, which he presented at Lieutenant Torckler but it missed fire; after the Pistols were fired by Lieutenant Torckler, my Master and Lieutenant Torckler had a struggle, my Master's servants interfered, when Lieutenant Torckler left the house, and my Master ran over to Major Holbrow's Bungalow.

Taken before us; 9th August 1829.

H. F. CALEY, Captain, }
4th Regt. N. I. }

JOHN HOLBROW,
Commanding at Sultanpore.

No. 10. G.

MONDAY; 10TH

TO LIEUT. BUTLER,
3d Regiment Native Infantry.

MY DEAR BUTLER.

I have only time to write one line to acquaint you that Lieut. Torckler of this corps is now under fixed bayonets and a European officer on the charge of attempting to murder me yesterday morning.

He came to my house between 8 and 9 A. M. muffled up in a cloak: when I went out of my bed room I told him I could have nothing to say to him and desired him to leave my quarters. He refused and seized me by the arm: I shook him off and went into my bed room closing the door he opened the door when I took my pistol from under my pillow and was commanding him to withdraw, when he drew a brace of loaded pistols from under his cloak & fired both at me within five yards distance from me at the time I presented at him on the first shot but having been loaded about fortnight my pistol missed fire and the moment his shot took place I sprung upon him and threw him down we were separated by the people about and he is now confined as I have said. We hear that he has written to Loodianah to post me and four other officers of this corps as Cowards and Blackguards. He is indeed beast enough for any thing, adieu.

Yours,

PHILIP GOLDNEY.

P. S.—Shew this to Murray, and indeed make it as public as you please.

SERVICE.

No. 11. G.

SULTANPORE OUDE 11TH AUGUST 1829.

Sir,

Having understood from you that Major Holbrow, Commanding the Regiment has deemed it incumbent on him to proceed against me as Magistrate, on the affidavit of Lieut. Goldney 4th Regiment N. I. and that I am to consider myself as a Prisoner on a Civil process, it having also been communicated to me, that depositions have been taken and witnesses Examined in my absence, I call upon

(XCVIII)

Major Holbrow, as Magistrate, to allow me to know what has been deposed against me, as is usual in the common Course of justice, and to take the deposition of witnesses I can produce on a matter which I deem it of the utmost importance to me to have recorded without delay.

To LIEUT. GEO. SALTER,
Adj't 4th Regt. N. I. }
SULTANPORE OUDE. }

I have, &c.,
W. Y. TORCKLER, Lieut.
4th Regiment N. I.

SERVICE.

No. 805.

No. 12. G.

SULTANPORE OUDE ; 11TH AUGT., 1829.

SIR,

I am ordered by Major Holbrow, Commanding the Station, to acquaint you that the depositions were only taken for the purpose of ascertaining that there was sufficient cause for placing you in close confinement, and that they were immediately forwarded to Brigadier Patton, by express, with a request that he would issue instructions for Major Holbrow's immediate guidance, which may be expected here to-morrow.

To LIEUT. W. Y. TORCKLER,
4th Regiment N. I. }
SULTANPORE OUDE. }

I have, &c.,
G. SALTER, Lieut.
Station Staff,

SERVICE.

No. 13. G.

SULTANPORE OUDE ; 11TH AUGUST, 1829.

SIR,

In reply to your letter of this date, though I must consider the act of refusing to communicate to me the nature of the depositions (in event of copies having been retained) extraordinary, yet, I trust, that suitable steps will not be neglected to prevent the testimony of the witnesses for the prosecution being influenced against me by the threats and intimidations of any one, which I have been informed have actually been resorted to by Lieut. Goldney, in regard to the person and life of one of his female Servants ; this appeared to me to require immediate investigation when I addressed my first letter to you this Morning, and I desire that you will Communicate the same for the information of Major Holbrow Comdg. the Station, whom I again call upon in his Capacity of Magistrate, to take the depositions of my witnesses on this head.

To LIEUT. GEO. SALTER,
Station Staff, }
Sultanpore. }

I have, &c.,
W. Y. TORCKLER, Lieut.
4th Regiment N. I.

No. 805.

SERVICE.

No. 14. G.

SULTANPORE OUDE 11TH AUGUST 1829.

SIR,

I am directed by Major Holbrow to inform you, that he can take no further steps in this affair until instructions arrive from the Brigadier Commanding the district.

2. In the event of your being able to prove any thing of the nature mentioned in your letter just received the proper time for doing so will be when an investigation of the business takes place, until which time I am ordered to request that you will refrain from any further correspondence.

To

LIEUT. TORCKLER,
4th Regt. N. I.

}

I have, &c.,
GEO. SALTER, LIEUT.
Station Staff.

SERVICE.

No. 15. G.

SULTANPORE OUDE; 14TH AUG, 1829.

SIR,

Lieutenant Oldfield, Commanding the guard over my person having taken it on himself to stop a messenger sent me by my relatives in the corps, without any orders, I request that the necessary instructions may be issued to that officer to confine himself strictly to the orders given him, and not by a petty display of his own brief authority, to offer further insult to the helpless and unfortunate, as it surely cannot be the wish of the Commanding Officer to prevent communication between those so nearly related by ties of consanguinity as brother and sister.

To LIEUT. GEORGE SALTER,

Station Staff.
Sultanpore Oude.

}

I have, &c.,
W. Y. TORCKLER, LIEUT.,
4th Regt. N. I.

N. B.—No answer received to the above Letter.

SERVICE.

No. 16. G.

SULTANPORE OUDE; 22D AUGT., 1829.

SIR,

1. I must request that Major Holbrow Commanding the Station, will cause me to be furnished with written communications of all Orders, a compliance with which is expected from me, but particularly of such as are issued to the Officers on Duty at my Quarters the indecorum and levity of whose behaviour in general does not manifest that they consider the Duty at all of a disagreeable nature, but rather much to the reverse.

2. On the present occasion, I have myself thought fit to notice, as I consider it fully deserved, the indelicate conduct of Lieutenant Oldfield in particular, in intruding himself on my privacy without having the civility to announce himself, which, I did venture to presume, was not required of him by the Orders of the Commanding Officer, as I had already (with reference to my letter of the 14th Current, which was not honored with a reply) seemingly in vain called the attention of the Commanding Officer to what then appeared an unauthorized and capricious assumption of power in the same Officer; and in consequence of which those concerned have been deterred from seeking that free access to me, which was denied merely to a menial, their messenger, conceiving, as I have been informed, that such could not be attempted without personal molestation to themselves; this I have every reason to complain of, as no imaginary nor common grievance, as well as of every instance of wanton rudeness on the part of the Officers in Custody of my person at any time.

3. In declining to receive a verbal communication from the Adjutant this morning, until he forced himself into my apartment, no disrespect was intend-

[C]

ed by me to the Commanding Officer, who must however be aware, that when such can otherwise be avoided, a personal interview with that Officer or those persons who combined with him to insult me, is most disagreeable and revolting to my feelings at all times.

To LIEUT. GEO. SALTER, }
Station Staff. }
Sultanpore Oude. }

I have, &c.,
 W. Y. TORCKLER,
Lieut. 4th Regiment N. I.

No. 811.

No. 17. G. SULTANPORE OUDE; 23d AUG., 1829.

SIR,

1, The Commanding Officer desires, that you will submit quietly to the Orders of the Officers on duty who are responsible to him for their propriety.

2, The Officers have been ordered to receive no direct communication whatever from you, but they will forward to me as Station Staff, any letters which you may wish to submit to the Commanding Officer.

To LIEUT. TORCKLER, }
4th Regiment N. I. }

I have, &c.,
 GEO SALTER, LIEUT.,
4th Regiment N. I.

SERVICE.

No. 18. G. SULTANPORE OUDE, 23d AUG., 1829.

SIR,

1. In reply to your letter of this day's date just received, no notice having been taken of the subject, mentioned in my former letters of yesterday's date, and of the 14th Current, I request to be distinctly informed, whether Major Holbrow has issued Orders to prevent my relatives in the Corps from coming to visit me, as they have been told such is the case.

2. All orders whether communicated through the Officers on Duty, or any other channel, will of course meet with the most cheerful and ready compliance from me, when I know satisfactorily that such emanate from the Commanding Officer himself.

To LIEUT GEO SALTER }
Station Staff. }
Sultanpore Oude. }

I have, &c.
 W Y TORCKLER, LIEUT.
4th Regiment N. I.

SERVICE.

No. 812.

No. 19. G. SULTANPORE OUDE 23d AUG., 1829.

SIR,

I am directed by the Commanding Officer, to inform you that your relatives having never applied for permission to visit you, no orders were issued on the subject; but in consequence of your letter of yesterday they have been informed that they are at liberty to visit you whenever they please, and instructions to the same effect have been given to the Officer on duty.

To LIEUTENANT TORCKLER, }
4th Regiment N. I. }

I have, &c.,
 GEO SALTER, Lieut.
Station Staff.

[CI]
SERVICE.

No. 20. G.
Sir,

SULTANPOOR OUDE; 7TH SEP. 1829.

I trust Brigadier Patton, C. B., Comdg. in Oude, will not deem me troublesome in making one more appeal to him & which I beg you will kindly submit to him: it would be a great relief to my mind to know the full extent of what I am charged with, or rather for what I am now under restraint, and I shall be ever grateful to Brigadier Patton, if he will in humanity, cause me to be furnished with a copy of the depositions taken by Major Holbrow, Commanding the Station, and sent by express to the Brigadier on the 9th Ultimo. Independent of the weight of anxiety it would remove from my mind, the perusal of the depositions will prepare me to meet the subject at my trial, and with somewhat collected feelings.

To CAPTAIN FITZGERALD,
Major of Brigade,
&c. &c.

I have, &c.,
W. Y. TORCKLER, Lieut.

LUCKNOW.

No. 264.

4th Regiment N. I.

No. 21. G. Oude Brigade Office; Lucknow 10th Sept., 1829.
Sir,

I have the honor to acknowledge the receipt of your letter dated 7th Instant, and in reply beg to acquaint you, that the Documents alluded to by you were forwarded to the Dy Asst. Adjt General Cawnpore. from whence they have not since been returned and no copies of them kept in the Office.

To LIEUT. TORCKLER,
4th Regiment N. I.,
SULTANPOOR.

I have, &c.,
J FITZGERALD, Captain,
Brigade Major,
OUDE.

CHARGE.
No. 201.

No. 22. G. Deputy Judge Advocate Generals Office, Cawnpore 9th Sept. 1829.
Sir,

I perform a painful part of the duty of my Situation in transmitting an authenticated Copy of the Charge on which you are to be arraigned before a General Court Martial to be held at this Station. The day and place of assembly will be hereafter notified to you, a list of the President and Members will also be furnished, and a list of the witnesses in support of the Prosecution; not as a matter of right to which you are entitled, but as a matter of favour.

Should there be any witnesses whom you may wish me to Summon in your defence, or any Books, Letters, Papers, or Documents of any description, which you may wish me to procure for you, you will be pleased to transmit to me a list and description of them, with dates attached if possible.

On your arrival at this Station, you will do me the favour to intimate that circumstance, and your place of residence to me with a view to our more speedy communication with each other.

To LIEUT. W. Y. TORCKLER,
4th. Regiment N. I.
Sultanpoor Oude.

I have &c.,
W. PALMER, Lieut.
Dy. Judge Advocate Genl.

No. 23. G. Dy. Judge Advocate General's Office Cawnpore 9th, September, 1829.

CHARGE.

Lieutenant W. Y. Torckler of the 4th Regiment of N. I. placed in arrest on the following Charge

For having, at Sultanpore, in the Nawab Vizier's dominions, on the 9th of August 1829, maliciously fired a loaded Pistol or two loaded Pistols, at Lieut. P. Goldney, of the same Regt. with intent to murder the said Lt. Goldney.

By order of his Excellency the Right Hon'ble the Comdr.-in-Chief.

Adjutant General's Office,
Presy of Fort William,
27th August 1829,

}

C. FAGAN,
Adjutant General
of the Army.

* No: 293.

No. 24 G. Depy. Judge Advocate General's Office, Cawnpore 20 Octr. 1829.

Sir,

With reference to your letter of the 13th of September, forwarding a List of the Book, Letters, & documents for which you are anxious preparatory to your trial, I have the honour to transmit authenticated copies of some of those alluded to in the 1st Paragraph of your list; the remainder will be furnished on the arrival of Major Holbrow Commanding 4th Native Infantry, and of the office of the Adjutant 4th Regiment Native Infantry.

2nd. The book alluded to in the 2nd Paragraph will be forth-coming on the trial.

3rd. The letters referred to in the 3rd, 4th, and 5th Paragraphs of your list, are in course of preparation, and will be furnished in the course of this afternoon or early to-morrow morning.

4th. The letter required in the 6th Paragraph of your list will be furnished on the arrival of the Regimental Office 4th Native Infantry.

5th. With reference to the Correspondence alluded to in the 7th, 8th, 9th, 10th, and 11th Paragraphs of your list, I have the honour to acquaint you, that, although the whole of it is in my possession, I have received the commands of The Right Hon'ble the Commander in Chief not to furnish copies of the papers alluded to in the 10th & 11 Paragraphs, unless they are considered by me to be absolutely requisite for your defence; --- and as I do not at present consider any of the papers referred in the several paragraphs above-mentioned, to be in any manner connected with the charge on which you are to be arraigned I do not feel myself authorized to furnish you with the Copies of them. It is therefore unnecessary for me to acquaint you that the papers mentioned in 2nd and 3rd Paragraphs of your letter of the 18th September last, will not be furnished to you.

6th I have the honor to forward copies, from the original of the affidavit by Lieutenant Goldney 4th Native Infantry and of the statements of two of his servants, viz. Jewhyr bearer, and Shaik Buddoo Kidmutdgar, made before Major Holbrow Commanding at Sultanpore, and Captain Caley 4th Native Infantry. I am not aware that any depositions, in the proper sense of that term, were taken

before Major Holbrow, I will however inquire into the circumstance, and acquaint you with the result.

7th. The witnesses required by you in your letter of the 13th of September last, have been duly summoned.

To LIEUT. TORCKLER,
4th Regt. N. I.
Cawnpore. }

I have, &c,
J. W. PALMER, Lieut.
Deputy Judge Advocate General

SERVICE.

No. 25. G.

CAWNPORE; 22D OCT., 1829.

SIR,

1. I have the honor to acknowledge the receipt of your letter of the 20th Current, and its enumerated accompaniments.

2. With reference to your 5th Paragraph, I observe that although you state the Commander-in-Chief has left it to your option to furnish or withhold, the correspondence referred to in the 10th and 11th Paragraphs of my list, yet that you appear to deny me, without His Excellency's Commands, the papers which I requested in the 7th 8th and 9th Paragraphs of the forenamed document, though they have not all exclusive reference to the same subject.

3. I should be much obliged to you to inform me, whether I rightly understand you to say that the Commander-in-Chief has left it entirely to the option of you, who are to be my Prosecutor, to give, or deny me the papers in question, though I assure you I deem them necessary for my defence, when on trial for my life; and when it is impossible you can be able to form any certain judgment of the scope and nature of that defence; or to decide upon what turn it may be necessary for it to take. I wish particularly to be informed whether His Excellency has left me, for a portion of the means of my defence, entirely dependent on your, my public prosecutor's decision, in a case so unusually and peculiarly critical; or whether they have been sent to you solely to enable you the more infallibly to prosecute me to conviction, by giving you a knowledge of circumstances, which you may or may not as you please, impart to me.

4. In reply to the 6th Paragraph of your letter, I have only to say that I used the term "deposition" in its proper sense of evidence publicly given, and that the term has been employed, on the same subject, by Major Holbrow himself. As, however, you have favored me with the "Statements" of the native servants, I hope you will also favor me with the "Statement" made by Lt. Goldney.

5. In conclusion I beg to point out, that you seem to me to be putting a latitude of interpretation, not allowable against a Prisoner capitally indicted, on the expressions employed by the Commander-in-Chief. The words of His Excellency, as given by you, are "*unless they*" (Paragraphs 10 and 11) "are considered by you to be absolutely necessary for my defence" whereas you refuse those, and other papers, "because you do not at present consider them to be in any manner connected with the charge" although they may be absolutely requisite for the defence, and yet not be, to your knowledge "connected with the charge," as long as that knowledge is limited, in consequence of my silence respecting my intend-

ed method of defence, which I do not presume His Lordship requires me to disclose, prematurely, in order to convince you of the necessity under which I labor for the papers in discussion.

6. The tenor of your reply will guide me in appealing, or not, to what I may then well term the merciful consideration of Viscount Combermere, to take off the restrictions which I understand you to say are placed on my defence, while my life is in jeopardy.

To, **LIEUT. W. PALMER,**
Dy. Judge Advocate Genl.
&c. &c. &c.
Cawnpore.

I have, &c.,
W. Y. TORCKLER, Lieut.
4th Regiment Nat. Inf.

No. 306:

No. 26. G. *Deputy Judge Advocate Generals Office, Cawnpore 29th Oct. 1829:*

SIR,

With reference to the 3rd Paragraph of my letter, No. 293, under date the 20th Instant, I herewith have the honour to transmit copies of the letters required in 3rd, 4th, and 5th, paragraphs of your list, forwarded with your letter of the 13th of September last, as specified below.

These letters would have been furnished earlier, had not an unusually heavy press of business, and an establishment of Writers, altogether inadequate to its performance, rendered it impossible to transcribe them before.

I have the honour, also, in compliance with the requisition contained in the 4th Paragraph of your letter of the 22nd Instant, to inclose copy of the "statement" by Lieutenant Goldney:

The papers and documents which you consider to be connected with your case, and copies of which you require, are so voluminous, and at present so unconnected, that I cannot reply, at greater length to your letter of the 22d Instant, till I have had an opportunity of seeing several letters in the Regimental Office of the 4th Native Infantry,--on perusal of which I will not fail to give you a speedy answer, and will furnish you every letter in my possession, consistently with the instructions which I have received from the Adjutant General of the Army, by order of His Excellency the Commander in Chief

To, **LIEUTENANT TORCKLER,**
4th Regiment N. I.
Cawnpore.

I have, &c.,
W. PALMER, Lieut.
Dy. Judge Advocate General.

No. 328:

No. 27. G. *Deputy Judge Advocate General's Office Cawnpore 6th Novr. 1829.*

SIR,

I lose not a moment in transmitting an authenticated copy, of the amended charge, which has been preferred against you by order of His Excellency the Right Honorable the Commander in chief, and which has this morning been put into my hands.

You will be pleased to return to me the copy of the charge, formerly sent to you, and also acknowledge the receipt of this communication.

To, **LIEUT. TORCKLER,**
4th Regiment N. I.
Cawnpore.

I have, &c.,
W. PALMER, Lieut.
Dy. Judge Advocate General

(CV)

CHARGE.

No. 27. G.

Lieutenant W. Y. Torckler of the 4th Regiment N. I. placed in arrest on the following charge.

Having at Sultanpore in the dominions of the King of Oude, on the 9th of August 1829, unlawfully, maliciously and feloniously fired a loaded Pistol, or two Pistols, at Lieutenant Philip Goldney of the same Regiment, with intent to murder the said Lieutenant Goldney.

By order of his Excellency the Right Hon'ble the Commander-in-Chief.

W. S. BEATSON.

Deputy Adjutant General of the Army.

No. 28. G.

CAWNPOR 7TH Nov. 1829.

SIR,

I have the honor to acknowledge the receipt of your letter of yesterday's date, together with a copy of a charge against me, but in reply to the last paragraph of your letter, I hope you will excuse my inability to comply with your requisition, as the present is not a new but only an amended charge, consequently it is necessary, I should retain the first copy for purposes of comparison.

To LIEUT. W. PALMER,
Deputy Judge Advocate General.
Cawnpore }

I have &c.,
W. Y. TORCKLER, LIEUT
4th Regiment N. I.

No. 29. G.

CAWNPOR 7TH NOV. 1829.

SIR,

With reference to the altered charge which, I yesterday received a copy of from you, and to the anxiety I have not to go into Court more unprepared to meet it than I can possibly : will you do me the favor to inform me as distinctly as you may be able to do, in virtue of, and upon, what statute I am indicted, in order that I may make myself acquainted with that particular law and not have my attention distracted by references to others, which may afterwards prove to be of no use to me.

I wish you to understand, that I am asking you for the same legal information on the above point, as a favor which you would feel bound to give the Court either in an opening address, or upon their asking the question ; for although, I should then learn it in common with them, it would be too late for me to instruct myself in it.

To LIEUT. W. PALMER, }
Deputy Judge Advt. Genl. }
Cawnpore. }

I have, &c.,
W. Y. TORCKLER, Lieut.
4th Regiment N. I.

No. 30.

No. 30. G. *Depy. Judge Advt. Genls. Office ; Cawnpore, the 8th Nov. 1829.*
SIR,

I have had the honor to receive your letter of yesterday's date, and lose no time in affording you the information you seek.

In reply, then, to the question, which you request me to answer as distinctly as I may be able to do, and which is— "in virtue of, and upon, what statute you are indicted—" I have to acquaint you that the Charge against you is founded on the Provisions of a Bill entitled "an act for improving the administra-

"tion of criminal justice in the East Indies," which took effect on and from the first day of March 1829, the 58 and 59 Sections of which are applicable to the case in question.

A Copy of these Sections, or the act itself, I shall be happy to send you should you, be desirous to consult them or it.

To LIEUT. TORCKLER,
4th Regt. N. I.
Cawnpore. }

I have, &c.

W. PALMER, LIEUT.

Depy. Judge Advct. Genl.

SEVRICE.

No. 31. G.

CAWNPORE ; 9TH NOVEMBER, 1829.

SIR,

In doing myself the honor to acknowledge the receipt of your letter of yesterday's date, and the offer you so kindly made in the concluding paragraph, I shall feel very much obliged if you will let me have a copy of the two sections of the Act 9th Geo. IV. Chap. 74. to which you refer on the subject.

To LIEUT. W. PALMER,
Depy. Judge Advct. Genl.
CAWNPORE. }

I have, &c.,

W. Y. TORCKLER, LIEUT.

4th Regt. N. I.

No. 338.

No. 32. G. Deputy Judge Advocate General's Office ; Cawnpore, the 9th November, 1829.

SIR,

In compliance with the request contained in your letter of this day's date, I lose no time in transmitting a copy of the two Sections of the 9th Geo. 4 C. 74. Sess. 1828, bearing reference to the charge preferred against you---I need not assure you that however much I may require such law Books. as I have myself, I shall be happy at all times to send them to you, should you require to consult them,

To LIEUT. TORCKLER,
4th Regiment Native Infantry.
Cawnpore. }

I have, &c.,

W. PALMER, Lieut.

Depy. Judge Advct. Genl.

No. 33. G.

EXTRACT 9th Geo. 4th Chap. Sess. 1828.

58th SEC. And be it enacted, That if any person unlawfully and maliciously shall administer or attempt to administer to any person, or shall cause to be taken by any person, any Poison or other destructive thing, or shall unlawfully and maliciously attempt to drown, suffocate or strangle any person, or shall unlawfully and maliciously shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall unlawfully and maliciously stab, cut or wound, any person, with intent, in any of the cases aforesaid, to murder such person, every such offender, shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon.

59th SEC. And be it enacted, That if any person unlawfully and maliciously shall shoot at any person, or shall, by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person, or shall unlawfully and maliciously stab, cut or wound any person with intent, in any of the cases aforesaid, to maim, disfigure or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of the party so offending, or of any of his accomplices, for any offence for which he or they may respectively be liable by law to be apprehended or detained, every such offender, shall be guilty of felony, and, being

convicted thereof, shall suffer death as a felon : provided always, that in case it shall appear on the trial of any person indicted for any of the offence above specified, that such acts of shooting, or of attempting to discharge loaded arms, or of stabbing, cutting or wounding as aforesaid, were committed under such circumstances, that if death had ensued therefrom, the same would not in law have amounted to the crime of murder, in every such case the person so indicted shall be acquitted of felony.

*Depy. Judge Advct. Gents. Office; }
Cawnpore ; 9th November, 1829. }*

(True Copy.)

W. PALMER, LIEUT.

Deputy Judge Advocate General.

No. 347.

No. 34. G. Dy. Judge Advocate Generals Office, Cawnpore 11th November 1829.

SIR,

Accompanying I have the honor to forward authenticated Copies of certain letters required by you, a list of which is hereto annexed.

Having perused the papers &c., alluded to in my letter No. 306, bearing date the 29th Ultimo, to your address, I hasten to reply to your communication of the 22d of October, and I am now under the painful necessity of acquainting you that the letters for which you applied, and which are particularized in the 7th 8th 9th, 10th, and 11th, Paragraphs of your list bearing date the 13th September, cannot be furnished to you, consistently, in my opinion, with the instructions which I have received from the Adjutant General of the Army, by order of His Excellency the Commander-in-Chief.

I am therein informed " that only the papers immediately connected with the charge on which you are to be arraigned are to be furnished to you" and that the papers mentioned in the 10th, and 11th, Paragraphs, in particular " are not to be furnished to Lieut. Torckler, unless considered by you to be absolutely requisite for his defence."

After the most attentive and anxious consideration of the question which the multifarious Trials on hand enable me to give it, I cannot discover any cause for altering the determination, I originally came to, of not furnishing you with any of the papers referred to in the 7th, 8th, 9th 10th, and 11th Paragraphs of the list above mentioned, and although His Excellency the Commander-in-Chief, has only been pleased to command me not to furnish those specified in the 10th, and 11th paragraphs, yet, as it is His Lordships intention, gathered from my instructions " that only the papers immediately connected with the charge on which you are to be arraigned are to be furnished to you" I do not feel at liberty to comply with your requisition.

Nevertheless should the General Court Martial before which you are to be tried, be of opinion that these papers are connected with the Charge before it, and requisite for your defence, I shall in that case have the papers in readiness to produce after stating my objection to their admissibility.

To, *LIEUT. TORCKLER,*
4th Regiment N. I. }
Cawnpore. }

I have &c.,
W. PALMER, Lieut.

(CVIII)

No. 364.

Deputy Judge Advocate General's Office;

No. 35. G.

CAWNPORE; 18TH NOV. 1829.

SIR,

I have the honor to inform you that the European General Court Martial, directed by General Orders 27th August 1829, by His Excellency the Commander-in-Chief, to be assembled at this Station, for your Trial, is, by Division Orders of yesterday's date, ordered to meet at my Quarters to-morrow morning at Ten o'Clock in the forenoon.

A List of the President and Members, I will forward to you in the course of the day.

To

LIEUT. TORCKLER, }
4th Regt. Nat. Inf.
CAWNPORE.

I have, &c.,
W. PALMER,
Dy. Judge Advocate Genl.

No. 36. G.

CAWNPORE; 18TH NOV., 1829.

SIR,

In the event of your guaranteeing that no objection will be made to the letters, delivered up by the Deputy Post Master at Allahabad, being received as good evidence of the fact to which they allude, without further authentication, I will not put Captain Burrough's to the inconvenience of remaining; though I cannot help remarking that his long postponement of a reply to, or any other notice of, my letter demanding them, when he knew not on what day my trial might come on, nor how materially to my disadvantage his negligence might prove, evinced no great nor humane anxiety on his part to study either my convenience or my safety.

If you cannot give me the required assurance, I have no alternative but to detain the Post Master.

I beg to remind you that this is the fourth day you have had the papers, sent by Lieutenant Butler in your possession, though I ought to have had them immediately they arrived.

To

LIEUT. W. PALMER, }
Dy. Judge Advocate Genl.
CAWNPORE.

I have, &c.,
W. Y. TORCKLER, LIEUT.
4th Regt. N. I.

No. 365.

Deputy Judge Advocate General's Office;

No. 37. G.

CAWNPORE; 18TH NOV., 1829.

SIR,

I have the honor to acknowledge the receipt of your letter of this date, and in reply have to acquaint you that I cannot guarantee what description of

evidence the General Court Martial will or will not admit. I shall therefore make instant inquiries for Captain Burroughs, though I fully understood, that the production of the letters required by you, was to be considered as dispensing with his personal attendance.

With reference to the concluding Paragraph of your letter, in which you remind me that this is the fourth day the letter sent by Lieutenant Butler has been in my possession, though you ought to have had it immediately on its arrival, I have to remark, that without entering into any discussion, as to the right here advanced, your trial would not have come on for the next week, or perhaps fortnight, had I not consulted your convenience in preference to my own, as, independently of the numerous papers required by you to be copied and transmitted to you, and the numerous witnesses whom you have called upon me to summon, I have very lately had the proceedings of five General Courts Martial, to prepare for despatch, and have also other business besides your's to attend to, and if, for the future, I open and close my Office, at hours strictly official, you will experience more inconvenience than you now complain of, and I shall enjoy much more personal ease than you seem disposed to allow me.

Accompanying I have the honor to transmit the letter in question, being the only document of the kind received from Lieutenant Butler. It is on four separate pieces of paper.

To LIEUT. TORCKLER,
4th Regt. N. I.
CAWNPORE:

I have, &c.,
W. PALMER, LIEUT.
Dy. Judge Advocate Genl.

No. 38. G.

CAWNPORE; 18TH NOVEMBER, 1829.

SIR,

In reply to your letter just received, or, more properly speaking, to that part of it which complains of the personal inconvenience I have been the means of causing you, I beg to say that I regret very much that such has been the fact, as it has never been my wish to have interfered with your office arrangements. I may observe, however, that the long detention of Mr Butler's letters, could not have been the cause of any such inconvenience (as you leave to be inferred from grounding your remark on mine in respect to it) for all the trouble you were bound to take with them was to have sent them to me the instant they were received. If however you have taken copies of, or extracts from, them (the only way I can account for their having any connexion with the increased duties of your office) I beg distinctly to protest against that procedure.

For all facilities you render me, which you are not officially bound to do, I can assure you I am exceedingly thankful.

To LIEUT. W. PALMER,
Dy. Judge Advct. Genl.
Cawnpore.

I have, &c.,
W. Y. TORCKLER;
4th Regt. Native Infantry.

Adjutant General's Office ; Presidency of Fort William, 5th October, 1829.

No. 39. G.

SIR,

I have the honor to acknowledge the receipt of your letter of the 19th Ultimo, enclosing a copy of a list of papers required by Lieutenant Torckler, of the 4th Native Infantry, as essential to his defence on his approaching trial ; and,

in reply, I am directed by the Commander-in-Chief to inform you, that those enumerated in the 10th and 11th paragraphs of his requisition, are unconnected with the charge on which he is arraigned, and, consequently, that His Excellency does not deem it expedient that they should be supplied.

2. On an application to Major General Sir S. Whittingham, K. C. B. Commanding the Cawnpore Division, the document mentioned in the 13th Paragraph of Lieutenant Torckler's list will be furnished to you, in original, as it is possible that they may prove useful to that Officer, in defending himself from the charge which has been preferred against him.

To LIEUT. PALMER,
Depty. Judge Adv. Genl.
Cawnpore Division.

I have, &c.,
 C. FAGAN,
Adjutant General of the Army.

No. 40. *G. Adjutant General's Office Presidency of Fort William 6th October 1829.*

SIR,

I have the honor to acknowledge the receipt of your letters of the 19th, and 21st, Ultimo, enclosing applications from Lieutenant Torckler of the 4th Native Infantry, for certain documents which he considers likely to be required by him on his defence, and though the Commander-in-Chief has been pleased to cause it to be intimated to you, in my letter of yesterday's date, that only the papers immediately connected with the charge on which Lieutenant Torckler is to be arraigned are to be furnished to him, His Excellency considering it necessary, that all the documents specified should be in your possession, desires me to transmit to you the originals, as shewn in the annexed list, which are not to be furnished to Lieutenant Torckler, unless considered by you to be absolutely requisite for his defence; in which case, you will consider it your duty to recommend to the Court, that he be confined to the refutation of the specific charge on which he is arraigned, and prevented from entering into a detail of circumstances unconnected with the occurrence which has led to his trial.

2. The papers specified in excess to those now sent, are deposited with the Staff Officers at the different Stations where they were sent for record, to whom you may apply for such as may be required.

To LIEUT. PALMER,
Dy. Judge Advocate Genl.
Cawnpore Division.

I have &c.,
 C. FAGAN,
Adjt. Genl. of the Army.

List of papers sent to Lieutenant W. Palmer Deputy Judge Advocate General, Cawnpore Division, with letter No. 1790, of the 6th of Oct. 1829.

Letter from Major General Sir, S. Whittingham, to the Adjt. General, No. 225, dated 5th May, 1829, with the following enclosures.

Charges by Major Holbrow against Lieutenant Torckler 4th N. I., dated 18th April, 1829.

Letter from Captain Smallpage, to Major Holbrow, No. 40, dated 4th March 1829.

Letter from Lieutenant Torckler, to Captain Smallpage, dated 16th April 1829.

1829. Letter from Lieutenant Salter, to Lieutenant Torckler, dated 16th April

Letter from Lieutenant Torckler, to Lieut Salter, dated 17th April 1829.

1829. Letter from Major Holbrow to Captain Smallpage, dated 18th April

Letter from Brigadier Patton to Capt. MacKinlay No. 100, dated 26th April 1829.

2. Letter from Major General Sir, S Whittingham to Adj. Genl. No. 380, dated 21st June 1829, with the following enclosures.

Letter from Brigadier Patton to Captain MacKinlay No. 181, dated 18th June 1829.

1829. Letter from Lieutenant Torckler to the Adjutant Genl. dated 13th June

1829. Letter from Major Holbrow to the Adjutant General, dated, 5th June

Letter from Lieutenant Salter to Major Holbrow, dated, 4th June, 1829.

Extract from Major Holbrows letter to Captain Anderson, Deputy Assistant Adjutant General Sirhind Division, dated 11th Oct. 1828.

3. Letter from Major General Sir, S. Whittingham to the Adjutant General No. 404, dated 23d July 1829, with the following enclosures.

1829. Letter from Lieutenant Torckler to Captain MacKinlay dated 7th July

Letter from Lieutenant Torckler to the Adjutant General dated 27th June 1829, annexing extract of Government Orders of the 1st February 1828, and correspondence between himself and Lieut. Salter from No. 1 to 8.

Letter from Major Holbrow to Captain MacKinlay, No. 790, dated 16th July 1829, with extract of his Regimental Orders, dated 6th July 1829, and copy of his letter to Captain Smallpage, No. 787, dated 7th July, 1829.

July 1829. Letter from Captain MacKinlay to Brigadier Patton, No. 386 dated 11th

4. Letter from Major General Sir, S. Whittingham to the Adj. Gen. No. 491, dated 25th August 1829, with the following enclosures.

Copies of correspondence between Lieutenant's Torckler and Salter from No. 1 to 7.

Letter from Lieutenant Torckler to Captain Mackinlay dated 21st August 1829.

(Signed) C. FAGAN,

Adjutant General of the Army.

Compared by me, with the originals or Copies admitted by the Court, this 4th day of February 1830.

Deputy Judge Advocate
General's Office - Calcutta,

W. PALMER, LIEUT.

Deputy Judge Advocate General

Supplementary Appendix.

It has been deemed necessary, in order to develop completely all the essential features of Lieutenant Torckler's case, to publish the several documents contained in this Appendix, being in no little way connected with his Trial though they were not laid before the Court, and though many of them relate to circumstances which have transpired since the termination of the Proceedings.

(No. 1.)

SERVICE.

Cawnpore; 1st January, 1830.

SIR,

Some very novel circumstances, which occurred on my trial (recently concluded) have placed me in a situation of considerable embarrassment, in regard to the most proper steps to be pursued in such a juncture. The best reflection I can give them however, and the best advice I can here find an opportunity to obtain, have determined me on the preliminary measure of publicly informing you, that I shall consider myself compelled, in regard to what is due from me to my character in the world, and particularly in my profession, to make a formal charge against Lieutenant W. Palmer, your Deputy in this Division, (to be investigated in such manner as may be there recommended) for various wilful misrepresentations to the Court, and especially for what I must consider a disgraceful misrepresentation of the evidence in the course of his summing up and in his official character of a Deputy Judge Advocate, calculated to have endangered my life had the Court relied on his mis-information.

I think it fair both to him, and to myself, to give you, who are the head of his department, this early information of my ultimate design; and also but just towards him not to enter farther into particulars until I have ascertained the transmission of my trial to your Office so that the whole case (and not my *ex-parte* one, only) may be at once before you.

I pledge myself however, at the risk of any forfeiture to make good what I have alleged, and shall allege, of his misrepresentations of the evidence in his last address to the Court, a misrepresentation, which, as the record will demonstrate it to be gross, I shall deem myself warranted to pronounce also deliberate, while its delicacy and extent can be judged of by yourself.

I apprehend a month, at the least must elapse before the Trial can leave this place for Calcutta, and once more pledge myself to transmit to you my full and open complaint against the Deputy Judge Advocate General, accordingly.

To COLONEL BRYANT,
Judge Advocate General,
CALCUTTA.

I have, &c. &c.,
W. Y. TORCKLER, Lieut.
4th Regiment Native Infantry.

SERVICE.

No. 2.

Cawnpore 30th January, 1830.

SIR,

1. Having ascertained that in a few days hence, my trial will be patched, I shall lose no further time in bringing to your notice, for the information of the Right Honorable the Commander-in-Chief, the grounds of a formal

charge on my part against Lieutenant Palmer, the Deputy Judge Advocate General who conducted the Proceedings. This step I take in redemption of the pledge contained in my letter to your address of the 1st January ; but it must remain with Higher Authority than mine is to decide, how far the following statement can bear me out in my complaint.

2. I bring forward the accusation under the impression that a Judge Advocate is bound to state with fairness both the Law and the facts, to the best of his knowledge and ability ; and that when he refers to the evidence in his final address, he is also bound to adduce such parts of it as appear to favor the Prisoner as well as those which tend only to substantiate the charge ; and if this supposition be wrong, I shall willingly defer to your correction, and withdraw my accusation.

3. My life and fame having both been at stake, and the disgrace of all my Relatives being incurrible by my failure to procure an acquittal, will, I trust, excuse this Proceeding in the eyes of His Lordship.

4. As the Reply, or Summing up (I know not which it is technically termed) is that on which my complaint must chiefly rest, and as it will be officially before you, I shall not do more, here, than quote some of the principal paragraphs that strike me as involving gross and wilful misrepresentations of the evidence and gratuitous charges against my character, at a time when I could not immediately refute them ; and I shall then respectfully leave His Excellency to determine, how far the spirit of official commands renders it incumbent on a Judge Advocate so to deal with a Prisoner and to endanger his Life, and his Honor, by such a Summary of the Proceedings as is calculated to induce an unfavorable Verdict, and which is not, at the same time, borne out by the record.

5. I accordingly pass over as much of the Reply as has allusion to the personal charges I felt it due to myself to make in the Defence, against the Deputy Judge Advocate, for suppression, or perversion of the Criminal Law, and for opening statements he knew he could not prove ; and come at once to such of his remarks on the actual evidence, as being manifestly at variance with the observable facts are therefore misrepresentations, corrupt, or unintentional, accordingly as circumstances may be taken to determine.

6. After a dissertation on the Law of assault and battery, in case of a trespass ; obviously from the context, entered into on the assumption that I fired at Lieutenant Goldney, on account of his having laid hands on me, gently, to put me out of the House ; and this being a very unfair manner of putting the real question to the Court ;---the Deputy Judge Advocate goes on to say " It must be for the Court to say whether Mr. Goldney committed any assault or battery upon Mr. Torckler, which in Law is to be considered a provocation sufficiently violent to excuse, or extenuate, an act of violence on Mr. Torckler's part, manifestly calculated to endanger Mr. Goldney's Life." Thus, he endeavors to represent me as having fired at Mr. Goldney on account of the latter having touched me, with his hand, and suppresses Mr. Goldney's own admission, that he had

produced *his* Pistol before I produced *mine* : It was not, I submit the fault of the Judge Advocate, if the Court have taken a correcter view of the circumstances.

7. Respecting his remarks on the palpable discrepancies, pointed out by me in the Defence, in the evidence of Lieut. Goldney, and his two servants, I distinctly accuse him of a provable misrepresentation ; and one that must have been the effect either of design, or negligence ; as he either did, or did not, know what the Proceedings themselves recorded. In the following words he deliberately informs the Court (with a view to making it discredit my assertion) that those discrepancies are all on *trivial* points :---“ But, Gentlemen, in what points are the “ discrepancies to be found ? In any *material* part of the transaction, or in some “ *non-essential* and *trivial* circumstances, too slight to be impressed on the minds “ of several spectators in the same manner.” Now, Sir, I need only refer you to the corresponding part of my defence, (and in support of that, to the record of the evidence) to show, that the three witnesses referred to, differed *essentially* from each other in *most material* points,---in points, on which the whole case turned---viz : in regard to the facts of who fired first ; who first produced their arms ; who first retreated from the other ; whether or not, I entered the Zenanah, or attempted to enter it ; and other points, without proof of which it had been impossible for any Court to have formed a proper judgment. Yet, in the face of this record, and having had the Defence three days in his possession, with liberty to have detained it four, the Judge Advocate asserted to the Court, that the chief discrepancies were of the following tenor and description : “ I am aware, that Mr. Goldney has sworn that there was a chick, but no cloth on “ it ; and that at first he said, he did not know whether it was up or down, and “ that he subsequently swore he believed it was down. In opposition to this, his “ Bearer and his native Girl, under the same solemn obligation of an oath, declare that there is a chick, that there is cloth upon it, and that the chick was up.”

8. To enumerate the foregoing as the principal variations must be the effect of disingenuousness, or ignorance,---it is not for me to determine which,---and even these comparative trifles are erroneously stated ; for neither Mr. Goldney, the Bearer, nor the Girl, has actually sworn as Lieutenant Palmer alleges. Mr. Goldney has stated that the chick was *rolled up* ; the Girl stated there was *no* cloth upon it, and the Bearer declared it was hanging *down* ; so that not only are the main facts suppressed, so as to make my objections on the subject appear captious and futile, but even what is admitted is detailed erroneously.

9. In like manner he goes on to declare : “ A discrepancy is to be “ found in the testimony of these three witnesses, as to the leaf of the door, behind which Mr. Goldney screened himself from the Prisoner's second fire. Mr. “ Goldney distinctly told the Court that it was behind one leaf, and the Bearers “ have affirmed as distinctly, the other ; and each described behind the leaf of one “ of these doors (in Court) the position of Mr. Goldney, that of the others, himself, and how they saw him stand. If these variations be rolled upon as affecting the veracity of these witnesses, I look upon, and submit them to the Court “ as *admirable* evidence of the truth of the general statements of the three” ; and he then quotes (which shows that he *meant* to persuade the Court there were no greater discrepancies) the following doctrine from Phillipps Law of evidence : “ a difference between witnesses on points of *little importance*, affords

no ground to suspect their veracity," and so forth; in respect to the whole of which quotation, I can only leave it to the Right Hon'ble the Commander in Chief to determine, whether, or not, it is to *such* contradictory statements, as I have exposed (between a prejudiced Prosecutor, and his two native Servants) that the author could have intended his proposition to apply; and consequently, how far that legal theory has been strained, or otherwise, on the occasion in point, to make it suit the purpose which your Deputy appears to have had in view against me. Even, as he admits the discrepancy, it is erroneously told; for instead of both the Servants, (one, a Bearer; the other a Khidmutgar;) agreeing in stating that it was behind the leaf of the door, other than Mr. Goldney stated, only *one* of them opposed his Master on that point, and one represented him as having aimed at me from behind it. If the above be a fair summing up, on the part *not* of a private Prosecutor, who may be carried away by personal hostility; nor of a pleading Lawyer, who feels bounds to keep back, or distort, the strong points of his adversary's case, but, of a Judge Advocate who only prosecutes officially, and whose employers do not desire him to press unjustly hard upon either party; and lastly, whose general summary the Members of a Court are apt to confide in, then have I greatly mistaken the true Rules of his Office; but it is because I think differently from Lieutenant Palmer on this subject, that I humbly represent the question to our common Superior.

10. The ensuing Paragraph is so exceedingly cruel, such an attack on my character, and so totally mis-placed, as well as unfounded, that I must implore His Excellency to have me cleared from the foul imputation it makes against me, as I had no opportunity of repelling it on the spot, on account of my not having been permitted to offer a "Rejoinder," though I entreated leave to do so. It relates to the odious accusation of the horde of Banditti, first promulgated in the opening address, and finally thus coldly and tauntingly reiterated (after all failure of proof) in the concluding statement.---"Before I proceed to submit to the Court the Law which seems to bear on this case, I deem it necessary to advert to one or two complaints preferred against me in the defence; 1st. That, I did not establish the fact of the Prisoner being connected with a band of Russians. It was not necessary. I adduced the fact only, as having been the original cause of Mr. Goldney's loading his pistol, and never had an idea of proving---precisely the fact itself. But it is not too late for the Prisoner to examine Mr. Becher who is still here, and put to him the single question whether he did, or did not, tell Mr. Goldney so; and if he did not, whether he ever heard it himself? It was an act of mercy to Mr. Torckler that I have not called the latter on several points."

11. Good God! can it be possible that a Prisoner's character is justly assailable in such a manner as this by the Public Prosecutor? What can be inferred from the assertion of *mercy* but that that feeling alone prevented the Judge Advocate from blasting me for ever? And is such a person allowed deliberately to open his case by an allegation calculated to excite the horror of the Jury and the Judges, and in the end to declare that he never *meant* to prove it;---after he had pledged himself that he *would*---prove it, for that "it did not rest" (vide the opening statement) "on *light* or *unsubstantial* grounds"? Surely it was his duty to the Public to have called in Ensign Becher on the part of the

Prosecution (especially when the testimony on the point, of Mr. Goldney failed him) or else his duty to me to have declared that it *could not* be proved; instead of taking the latest opportunity of making the foregoing assertion? I even believe he officially mis-informed me, in saying that "it was not then too late for me to call in Mr. Beecher;" for after the Reply, if I were not even entitled, under the circumstances, to a Rejoinder, I could not have been entitled to adduce fresh evidence; but if I *were* entitled, then the Judge Advocate should have advised the Court to have complied with my request. He declares it was *not necessary* to prove the fact. If not, then it was surely not proper to have dwelt upon, and promised to prove, it in his opening speech. But it was absolutely necessary to the dearest part of my character that the total failure of proof should have been distinctly acknowledged, by my Public and Official accuser; and to gain that end is the principal object of the present address.

* Vide the N. B. Par. 18. of Lieut. Goldney's letter No. 1 annexed.

12. By the annexed letter from Mr. Goldney to Mr. Palmer, dated long before my trial came on, though I neither saw nor heard of it, till long after its conclusion, it will appear clear to you, that Lieutenant Palmer made the accusation of the Banditti, not merely in ignorance that he might *not* be able to prove it; but in the most unequivocal knowledge that it had **no foundation*; and yet he appears (in a manner at present unaccountable by me, except by the attribution of a very unworthy motive) to have embodied it in his opening statement, as a fact which there was no room left for him, even in humanity, to distrust. I confess that the letter alluded to extremely surprised me; for I never doubted that the severe and stigmatic nature of the leading address, was the consequence of Mr. Goldney's over-heated information; and yet such does not now appear to have been the fact; though why a Judge Advocate, having nothing but the administration of Justice in view, should be anxious to state *more* than the actual complainant supplied to him, passes my capacity to account for with credit to himself. I am and all along was, quite satisfied that no such desire existed in the breast of the late Commander in Chief; and it would indeed cause a dreadful feeling in the breast of any man under Trial, to be compelled to infer that the exaggerations of the Judge Advocate were the result of his instructions by the authority whence his warrant proceeded; and that he was bound to augment, in preference to temper the angry statements of a prejudiced complainant.

13. Many of the foregoing observations will apply to his improved accusation about the establishment of the *second Target*, and "my having vowed the ruin of the individual" whose figure I was said to have fired at in practice.

14. In the Judge Advocate's use of the word *Sleeping room*, or *Bed-room*, as applied to the *Box-room*, there is an exaggeratory disingenuousness which you may not perceive, unless the Proceedings contain a record of the misunderstanding come to in Court, that by the former two expressions the *Box room was not to be understood*; and yet the Reply makes use of them both against that very understanding, and with the obvious view of magnifying my alleged offence.

15. He describes Mr. Goldney, in the very face of all that Officer's evidence, as having in the first instance *retreated* to his Zenanah room ; whereas, he avowedly retired to it to procure a Pistol ; and as he had not at that time received any threat whatever from me, nor known that I was armed, the term *retreat* in its ordinary acceptation, is surely misapplied ; and tends to render more terrifying my actions.

16. The Judge Advocate states that, " Mr. Goldney has sworn that he did not return to the bow room, where Mr. Torckler was, till the latter came, and opened the Zenanah room door ;" and he states this in a way to induce the Court to *believe* it ; for he never says one weakening word about the opposing testimony of the two Servants ; though surely the intent and meaning of a fair " Summing up" must be to balance the testimony and arrange its whole import, without any leaning to either side, any perversion, or any holding back. In like manner when he mentions, unfavorably, my having changed my position, *after* the first fire, he states what was not the fact, agreeably, either to the real truth, or to Mr. Goldney's evidence, which he declares is most worthy of belief ; for I did not change from 2 to 3, (vide Plan No. 2.) *after* my first fire, and with the imputed view of attaining a more favorable ground ; but on the contrary, both shots were avowedly fired from the same position, and I never attempted to make the second more effectual, by changing my place for a nearer or a better one.

17. Even supposing that the Judge Advocate's Statement had been correct, as far as it went, was it not his Duty to have adduced, in balance, my own explanation *why* I did not attempt to retreat by the door of my entrance ;--but to that he does not make the slightest allusion. I offered a verbal correction of his account of my change of position, while Mr. Palmer was reading it to the Court, for I naturally feared the effect of the mis-statement ; but no notice was taken of it at the time, save by the President's telling me not to interrupt the Reply ; and to that order I of course attended. I beg to say in this place, that should there be a variation between my quotations from the Reply, and the relative portions of it before you on the record, I quote *verbatim* from the *original and what was read in Court*, and cannot be responsible for any disagreement.

18. Another most material misrepresentation is observable in the following paragraph :--" if you further believe that Mr. Goldney retired to his " Bedroom, and did not return to Mr. Torckler (as Mr. Goldney has " solemnly sworn) but that Mr. Torckler followed him *and fired one of his* " *prepared loaded pistols, before Mr. Goldney showed his*, and that *after this*, Mr. " Torckler, *while he was doing so*, changed position *a few paces farther into the* " *room, and then fired a second shot in the direction*" &c : Now the words I have underlined *are in diametric opposition to Mr. Goldney's actual evidence ; and yet they are put by the Judge Advocate to the Court, not only as the words of Mr. Goldney, but as words that ought to be believed (in consequence of the high character he has given to that witness's testimony) and as words which accordingly, suffice to prove me guilty of an intent to murder.

19. Further on, in the same, and succeeding Page, he alludes to the
 *Wherever words in Italics occur, they denote those which were underlined in the manuscript.

"challenge" contained in the defence, to himself to say, as a Lawyer, whether Mr. Goldney's evidence is *per se*, sufficient to convict me; and disposes that challenge by the adjunction of conditions not by me annexed to it, and founded only on *suppositional* testimony which the witness never uttered. If the views, thus incorrectly taken by the Judge Advocate, (who had four days to prepare his summary besides the advantage of a full acquaintance with the Proceedings) have been concurred in by the Court, it is impossible but that I must have been condemned of the crime and adjudged a death of ignominy. But if I have been acquitted, as the real nature of the evidence, and the integrity of my Judges, both lead me to expect; then will the acquittal form, of itself, a rebuke to the Judge Advocate, by showing that out of nearly twenty persons, more or less concerned, he alone viewed the evidence so as to make it ruin my character, and sacrifice my life.

20. Again, he, asserts that *"I acknowledged that I expressly cut the pockets of my pantaloons, for the purpose of letting the pistol barrells through, in order that the butt ends might not be seen, and that I went at eight in the morning, into the bed room of a man whom I had not been on terms with for nearly three years, and there tendered for his signature the note in evidence, with the words 'if you do not acknowledge that I have offered you the satisfaction of an Officer and a Gentleman,' I need only refer to my own defence to show how totally unfounded is the deliberate and exggeratory assertion that I acknowledged the points contained in the underlined words, or any thing that is construable into their legitimate substance."*

21. The opening address did me great, but I trust only temporary, injury, with Society at large; for no one heard it who did not believe that its cruellest aspersions were substantially correct; --coming as they did too, in a tone of perfect confidence, from the lips of an official Authority, who could not have reasonably been suspected of gross exaggeration. In like manner, the uncalled for taunts of the Reply, that it was *mercy* towards me that induced him to stop short in his proofs of my depravity, and that if I were wise, I would not urge him on; have had an effect that I cannot expect to get over without a public investigation into their real grounds. He himself seems aware of his undue severity against all unhappy Prisoners; for he travels out of the way, in his Reply, to remark on the public belief in that particular: but only they, who experience such agony as his open laceration of my feelings caused me to endure, can appreciate the self control which restrained me from flinging back upon him, at the instant, the invented calumnies, and claiming the Court's protection against their utterance, unproved.

22. It could not be expected, for human nature is scarce so perfect as that, that I should forbear from exposing such proceedings in my Defence; but I leave the latter with every confidence to be judged of by the best authority, whether it contains aught that the gratuitous aggressions of the Judge Advocate on my character, did not loudly demand from one whose Life was in jeopardy, and whose future fame depended on the exposure of how unfounded were the slurs that had been thus cast on him. If a public Prosecutor be permitted the fullest scope in charging a Prisoner with atrociousness, not contained in the regular indictment, surely the latter has the yet more necessary privilege of repelling the slander, and

warding the attack. Within those bounds, I trust, I have, in a case of much difficulty, scrupulously kept myself. I have been careful to do nothing but retort unmerited imputations, and to complain of unfair conduct which the Record can display ; but if I have done this indignantly, I trust I have done it within the limits of entire respect toward all, but the individual who called it forth ; and that though the terms I have applied to *him*, as my unfair and pitiless accuser, are strong (for how is it possible that they *could* be weak ?) they are not, at the same time, either inherently vulgar, or such as misbecome an innocent and humble man, in the honest repulsion of his public defamer.

23. In conclusion, I earnestly beseech of you to lay this case before His Excellency the Commander in Chief, as that of a man more anxious about his future character than his present fate ; and to assure His Lordship that, I am prepared to disprove the most odious allegation of my ever having been connected with lawless Ruffians, in whatever manner he may be pleased to command. Had I been permitted a Rejoinder by the Court (an indulgence to which that part of the Reply, perhaps gave me a claim) I should not have troubled you with this long address ; but I am now left without any other mode of appealing for protection against an improper Summing up, (in a Civil Court, if such a Summary produced a verdict of guilty, a new trial might be had) and I assure you, I have not entirely atoned the whole of the inaccuracies ; but only such as more powerfully affected my character and my life ; and were calculated to leave the Court at the latest moment, with an impression unfavourable to the cause of a Prisoner, so critically situated.

24. Of the annexed letter, * which shows, generally, how much of his address and reply, was unauthorized by his chief informant, I would respectfully refer you to the 6th. 18th. 21st. 23d. and 25th Paragraphs, in particular, to demonstrate how much that was mitigating the Judge Advocate was aware of, and yet suppressed ; and how totally unfounded was his Banditti allegation. It could not have had any other object than that of making a public display, and to further my conviction by the enlistment of much excited feelings against me ; and I am confident that the high authority who employs a Judge Advocate does not intend such a use as that to be made of his official privilege, or superior ability. Some of the audience declared that the account given of me in the opening speech made their blood run cold ; and scarcely any one doubted that I was a ruined, a vitiated, and a most guilty man.

25. Under all these most trying circumstances, I humbly hope that much allowance will be made for my actual errors, and my character cleared from imputed, but non-existing faults, by such a process as the Commander in Chief may deem most fitting in his humanity and his Justice.

To
LIEUT.-COL. BRYANT,
Judge Advocate General,
HEAD-QUARTERS.

I have the honor to be,
&c. &c. &c.
W. Y. TUCKER, Lieut.
4th Regiment N. I.

* Lieutenant Goldney's letter, No. 4. before mentioned

P. S. Since writing the above, I have ascertained that some variations exist between certain remarks contained in the defence, and what ought to be the corresponding portions of the record of the evidence. At Page 36,* of the former, and in allusion to a question put by me to Captain Mackinlay, the President is stated to have asked, "what connexion it had with the charge?" and the Judge Advocate to have answered "I really cannot imagine, Sir; it is quite irrelevant;" and on this strange assertion an opposite commentary is made in the defence. Again, at Page 74--75,† I have observed as follows: "He (the D. J. A. G.) actually tried to weaken it, by putting a wrong interpretation on the legal phrase 'report &c'" Thirdly, at Page 83,‡ I have given the phrase "God only knows" to Mr Goldney; and there are other variations of a similar nature, with a detail of which, however, I shall not trouble you here, as they must necessarily be observed in the course of your perusal. I do not adduce these omissions in an accusatory shape; because it is possible that Lieutenant Palmer (who must be better versed in the mode of recording trials than I am) may not have thought them necessary... but looked upon them as *obiter dicta*. However, as unless I offered you this explanation, my Defensive remarks might appear groundless, and even abrupt, in the eyes of His Excellency, I beg permission to assure you, upon my honor, that they all occurred just as I have stated them, and that the Defense contains nothing, in respect to the evidence, and the actual Proceedings in Court, which is not founded on what positively transpired.

8th February,
1830.

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W. Y. TORCKLER, Lieut.
4th Regiment Native Infantry.

No 3. "Preface to the Rejoinder offered by Lieutenant Torckler, but overruled by the Court; on the 15th December, 1829."

The following is the "Rejoinder" which I begged permission to make after hearing the "Reply," but which indulgence the Court would not allow.

I grounded my request on the circumstance of the Deputy Judge Advocate having introduced in the latter address a great deal that was virtually new matter, and the chief part of which was the assertion, that he did not prove the truth of the Banditti allegation, *only* because he wished to show me mercy in my unhappy situation: thereby leaving it to be unavoidably inferred, that I was in reality guilty of it, and that such he could, if he would, have demonstrated. Against so slanderous a promulgation I conceived I had, in every sense of Justice, a strong claim to record a rejoinder; for it involved a new and pointed charge, by alleging to the Court, that it was not pressed, in its former shape, solely because the lenity of the Prosecutor made him desire to spare me;--and that he still retained, in fact the means and power, but not the will, to blast my character in this particular. Again I considered that his misrepresentation of the most material parts of the evidence, in a great degree entitled me to an opportunity of placing the matter right; for if he, who had such full means of ascertaining the true substance and tenor of the evidence so far mistook it as to state it incorrectly in the most critical points; still more might the Members be in danger of falling into a

* Corresponding with Page 145.
† Do. Do. 172.
‡ Do. Do. 176.

similar error, who were necessarily more at the mercy of their memories, especially after they had heard the opinion and interpretation of the official keeper, as well as a transcriber, of the record. Thirdly, there was an unwarrantable attempt to impose on the Court, and the ultimate authorities, a belief that the Defence was nothing more than nominally mine; and that I was made, by my counsel, to utter sentiments, in which I did not by any means concur:---and lastly, as the Defence had not introduced any thing that was new, nor any thing that did not arise directly from what had been laid before the Court, I thought myself as much entitled to a Réjoinder as (vide G. O. C. on the recent case of Lieut. McGrath) the Judge Advocate was to an elaborate Reply or even perhaps to an inflammatory opening Statement.

If he had confined himself to a denial, or refutation, of the charges made in the Defence against his own Official conduct during the Trial, the case of my claim to a Réjoinder might have now been different; but, instead of that, he studiously refrained from so much as a plain and simple negation of those charges, while he filled his Reply with a reiterating of what he had already failed to establish, and with distortions of the evidence, which if they *did* not proceed from design, assuredly *ought* not to have resulted from negligence.

I therefore humbly submit to the decision of the Right Honorable the Commander in Chief, the Réjoinder I desired leave to make, at a moment when I was naturally filled with anxiety about the effect which such a Summing up had a chance of producing; and I trust it will not be found to be indecorously worded.

W. Y. FORTKLER, *Lieut.*
4th Regiment N. I.

" The Réjoinder."

Before the Court is finally closed, I rise, Mr. President and Gentlemen, humbly to crave your permission to *Rejoindre* to new matter introduced into the Prosecutor's *Réply*, on which I cannot, I ought not to be wholly silent.

With respect to the challenge so ostentatiously, and, I think I may say, barbarously, held forth by Mr. Palmer, in his Summary, with an affected display of mercy and compassion, in not having called in Mr. Becher before to prove "the infernal report of my being connected with a Band of Ruffians," daring me now to do so myself, I have but little to say; nevertheless with all my ignorance of Law, and want of skill in rhetoric, I think I can satisfactorily demonstrate to you, that in the whole course of these Proceedings, he has scarcely committed a stranger official error, than when he asked the question, why I did not examine Mr. Becher, and thus subject him to his own cross-examination, when he had deliberately foregone the privilege of calling him in Chief.

I will not deny, Gentlemen, that some inkling of his being the Author of this "infernal report" (as the Deputy Judge Advocate emphatically styled it) had reached my ears; and I was prepared, and most anxious, as my friends can testify, to have the circumstance wholly investigated; but when Mr. Goldney positively denied all knowledge as to the quarter from which he had heard the "vague re-

port" (as he repeatedly termed it) and Mr. Becher was not called in on the Prosecution, neither did Mr. Palmer himself, or through any of his other witnesses, furnish me with any clue to the mystery; was I to examine Mr. Becher on a point in my defence, which, if averred on his oath, as my own witness, it would have been contrary to Law, and impossible then for me to discredit it? Whether, Mr. Palmer, in his character of Prosecutor, or Judge Advocate, was really visited by secret compunctions of humanity, in desisting from the attempt to establish a fact of so heinous a character, which, yet, he would wish you believe; or whether his total inability to do so, and distrust of the credibility of Mr. Becher, who might have proved a more unlucky witness even than the principal one, induced him (as a matter of little importance) to drop all further attempts to prove an infamous allegation, so largely and elaborately inveighed upon in the Opening Address, for the sole purpose of attacking me now, more effectually when least prepared, with affected professions of mercy; I appeal to you, Gentlemen, to judge; and also to say, if I have been fairly dealt by: the whole line of Mr. Palmer's public conduct to me, as displayed in his cruel and deeply wounding Opening Address, and in the several instances deduced in my defence, to which you have all been witnesses; and in his no less biassed and prejudiced speech in summing up, lies open to the scrutiny of yourselves, and the world at large: I leave it for others to discover since he cannot himself make apparent, one single, solitary, instance, in which he has offered any thing in my exculpation, done, or said, any thing to evince that merciful disposition, by which he would now, (vainly, I am confident) incline you to believe he has in this particular been actuated towards me. I ask of you, Gentlemen, is this *mercy*, or is it not rather a refined piece of *barbarity*? Not content with recklessly dragging in an allegation, as a crimimatory fact, though totally unconnected (even, if proved) with the Charge at issue, for the purpose of defaming my character; but he would wish the stain to remain there indelibly fixed, by reiterating the foul aspersion, and vaunting, at this late hour, his ability to establish it. Whether Mr. Becher did tell Mr. Goldney the circumstance, though it is remarkable how Mr. Palmer should know this, when Mr. Goldney could not say so himself; whether it was a fabrication of Mr. Becher's own, or whether the result of some misinterpreted remark of that Officer, is little to the purpose now; the time for my refuting it is now gone past, unless it had, from motives of justice [the only true ground of mercy] been urged in due season. I can only repeat that from whatever source the tale sprung, from Mr. Goldney, Mr. Becher, or Mr. Palmer, himself, it is totally false and unfounded. The time may yet return, as I confidently look to His Excellency the Commander-in-Chief, and to your representation of the case, to protect me from this unprecedented and unjust usage, for the manifestation of this most groundless fabrication.

But admitting the truth of it, I again ask of you, Mr. President and Gentlemen, what connexion has it with the Charge? does it appear in Evidence that I made any use whatever of the men, said to be at my command, had they been Banditti, or did they prove to be regularly hired Sepoys in my pay? The facts speak for themselves:---I employed no *he*. I was anxious to implicate no one---not even a servant. I went alone, and unaccompanied, but openly and without disguise, to seek for that honorable, and not invidious, satisfaction, which my

friend had utterly failed in procuring for me, and which the Commanding Officer had refused to yield me.

I am sure then, Gentlemen, I do not ask too much, when I entreat of you, in deliberating on your verdict, to dismiss from your minds the whole of this foul tale of slander, as altogether irrelevant and unfounded; and that you will not allow any unfavorable impressions (which such assertions must naturally have imbued you with) to sway your minds in this last solemn act of duty to God, to the Prisoner at your Bar, and to your Country.

Mr. Palmer, as a farther act of mercy, told you when I distributed the *Plans* round the table, *that you were not to read the references underneath them.* I beg however, Gentlemen, that you will have the kindness to peruse those references, as they form equally a part of my defence, as the defence itself which was read to you:---the facts stated in the references under Plan No. 1. being deduced from the evidence taken before the Court; and those contained in Plan No. 2. forming strictly my own narrative.

If the Prosecutor could have proved more than he did, he neglected his public duty in not having done so; but if he could not, and yet concluded his exertions against me by an empty, though cruel, boast that he could, then all I can say is that he has deviated from the truth; when a graceful relinquishment of the Charge, and a ready confession of his suspicions having been groundless, would have been infinitely more creditable to both his head, and his heart. The man who can boast of having, in mercy spared me, after all the scurrility of his Opening Address, must think his auditors fools, if he expects they will believe in his latent Humanity; and if he does not so expect them, the assertion is nothing less than a piece of uncalled for Hypocrisy. His quotation from Cicero, regarding the heinousness of filching a good name, applies more to the man who, without proof, could bring himself to accuse, than to him who, on seeing the absence of such proof, repelled the obloquy with becoming indignation.

I trust for a future opportunity to demonstrate the unsoundness of the legal part of his final address; and expose, generally, the unfairness, and malignity, of the whole composition; but I do not think it necessary to do either here, as I am confident you will not permit your better judgments to be led astray by one, who has shown so little disposition or ability to direct you properly.

There is only one other point, which it becomes my bounden duty, Mr. President and Gentlemen, to press upon your notice, though I am persuaded it could not have escaped the observation of even disinterested spectators; I mean the very unjust, and unwarrantable license the D. J. A. assumed, in indirect, but sufficiently intelligible, innuendoes against my friend and counsel, Captain McNaghten, whose own delicacy did not permit him of course to notice in the brief remark of yesterday, what he is perhaps fully justified in treating with contempt; but though my inability at any time to prepare an extemporaneous address was then increased by the effects of severe indisposition during the night, which rendered it almost impossible for me to appear in Court at all yesterday, and in consequence of which I was indulgently permitted by the President to remain seated; it is not to be supposed that I did not

participate in the feelings of my kind friend, thus unnecessarily and wantonly attacked, or that I can pass it by, unnoticed, and in silence. Gentlemen, you yourselves have witnessed the calm and patient attention, the devoted and unremitting diligence, and talented exertions, which Captain McNaghten has manifested in my cause throughout, and may judge that this demands no less of me than the part which I now conceive it my duty to take ; but had you seen him in private intercourse with me, did you know all the delicacy, and kindness of heart, with which, [at the sacrifice, I fear too often, of domestic ease and comfort,] he was always ready to impart to me his best consolation and advice, though heretofore a perfect stranger to him ; whether, I say, his noble, disinterested, and generous, conduct to me as a friend in private life, or as the Public Counsel for the Prisoner at your Bar, is considered ; [for all which I take this Public opportunity of returning him my most grateful acknowledgements] you will, I hope, agree that, I am bound to exonerate Captain McNaghten from the imputations cast upon him in the Rejoinder.

It is hard indeed, Gentlemen, that I should not only have been subjected in Mr. Palmer's Opening Address, to unparalleled slanderous misrepresentations, and false accusations, totally irrelevant, and unconnected with the Charge ; but that even my best friend is not to escape his disingenuous insinuations ; even in this instance. Mr. Palmer chose wilfully to mislead you, as I have proved he has done before in many others. Gentlemen, he was told by Captain McNaghten, when *four* days ago he gave him the Defence, that I had perused it with him three several times, and that there was nothing in it which had not met my entire approval ; and yet, Mr. Palmer would wish you to believe directly the reverse, and for whatever he found unpalatable, or harsh, in the Defence, [forgetting that he had no one to thank but himself] he wished to attribute it to a different source, and made a display of tendering me his unmerited forgiveness, to which I now disclaim all title on such grounds. The fact is, there is not a single expression, and scarcely a circumstance mentioned in the Defence, which did not originate in my own suggestions, or met with my entire concurrence ; but perhaps Mr. Palmer is of opinion, if he had attempted, he would have succeeded much better in illustrating my ideas. At the same time, though I acknowledge, without cause for shame, my humble inability to cope with him in argument, equally as I am incompetent to emulate him in slander ; the Opening Address, and the Defence, are before you, Gentlemen : and I leave you to judge, whether there is any thing in the latter which is not borne out, and fully warranted, either in regard to the expressions contained in the former, or to the conduct of Mr. Palmer to me as Public Prosecutor, and as Judge Advocate in this Court, which you have all witnessed : a conduct, which he would now make appear comparatively lenient, by trying to impress you with a conviction that, out of pure mercy to me, he forbore to fasten on my character the maximum of guilt. A little proper reflection indeed, would have told him that in furtherance of his *professed* desire, a careful silence would have been more genuine mercy than an ostentatious boast ; and also, that by affecting to show me *mercy* at all, he was not only deviating from the line of his paramount duty ; but arrogating to himself an attribute which did not belong to his Public situation. It was for him to have established by just means, my guilt ; but it was for a higher power than his to have accorded mercy, and his vaunt was therefore as arrogant, as it was certainly untrue.

I need scarcely add that the present is entirely a spontaneous act of my own, were it not that even such might be doubted; and I only lament that I was unprepared to express these my unbiassed sentiments readily at the moment.

W. Y. TORCKLER, *Lieut.*
4th Regiment N. L.

COPY.

No. 4.*

Cawnpoor, 26th September, 1829.

MY DEAR SIR,

I send you a concise Statement of my differences with Lieut. Torckler.

1. In May, 1828, a short correspondence took place between us, commenced by himself, on which occasion he reported me to the Commanding Officer of the Regt. and ultimately sent in two charges against me. Not having been furnished with a copy of those charges, I can only state from recollection that they were to the effect that I had endeavored to provoke him, my Senior Officer, to fight a duel.

2. The above were returned by Brigadier Adams, who desired all correspondence to be recalled and the affair to be dropped.

3. About the 25th October following, Mr. Torckler was desirous of accommodating his disputes with the Officers of the Regiment with most, if not all, of whom he was on bad terms.

4. Among others he wrote a note to me expressive of his desire of a reconciliation.

5. I replied to his note to the following effect, "that I was about to leave the Regiment for a period of some months---that what had occurred between us could scarcely be forgotten during the few days I then had to remain; but that if on rejoining the Corps I found that he had not disturbed the harmony of my Brother Officers, and that his conduct had continued to justify the sincerity of his present professions, I would then be on such terms with him as the apparent difference in our dispositions and pursuits would admit."

6. He called next day and after many humble expressions of regret at having been deceived into his late opinion of me and others, he entreated me not to refuse him my hand. I *reluctantly* and *coldly* complied and some days afterwards entering his Tent by *mistake* with Lieut. Salter I returned his visit. From that time till the 13th (I think) of November, we remained upon the most distant possible terms.

7. I was absent from the above date until the 29th of June last, as Officiating Interpreter to the 36th Regt. On rejoining as Interpreter and Quarter Master in Lieut. Torckler's room, I found him again speaking to but two Officers of the Regiment and in close arrest.

8. On my return I was told that Lieut. Wilcox was supposed to have spoken to my disadvantage during my absence. I remarked that Mr. Wilcox had always appeared too much my friend for me to imagine he could do so, that I would however take an opportunity of mentioning the report quietly to him, and ask him if it was the case.

* This is the letter alluded to in mine (No. 2.) to Colonel Bryant, J. A. G-

9. Shortly after a misunderstanding took place between Lieut. Salter and Lieut. Wilcox : Mr. Salter desired me to explain to Lieut. Wilcox his reasons for wishing their intercourse to cease : viz : because Lieut. Wilcox had given up private conversation and correspondence to be made public use of by his brother in law Lieut. Torckler.

10. From this circumstance arose a coolness between Mr. Wilcox and myself : as he wished to name Mr. Torckler to confer with me on the subject. I declined meeting him (Lt. T.) assigning as a reason that I was not on terms with that Officer referring to my note of October preceding to show *why* I did not consider myself on friendly terms (viz his having relapsed into his former line of conduct.)

11. There being now a breach between Lieut. Wilcox and myself I wished to ascertain without delay the truth of what was reported to me when I first rejoined ; and begged a friend of Mr. Wilcox's to put the question to him quietly, as we were no longer on speaking terms.

12. Mr. Wilcox refusing to give a satisfactory explanation, I made use of expressions which induced him to call for immediate satisfaction.

13. I was preparing to meet him when it was intimated to me (as I was stepping into my buggy) that four Officers of the Regiment (Capt. Wilton, Lieutenants Oldfield, Salter, and Wilkie) had declared their opinion that if I met Mr. Wilcox, he ought not to have Mr. Torckler as his second, as that Officer in consequence of his conduct in May, 1828, was not entitled to appear in the field with me, having once endeavored to bring me to a Court Martial upon a private quarrel. I was desired to make use of this opinion.

14. This I determined to act upon ; and it being intimated on the ground to Mr. Torckler he left the field : Mr. Wilcox being provided with another friend, when he gave a satisfactory explanation and the affair terminated amicably.

15. About an hour after this Mr. Wilcox brought Lieutenant Wilkie the following note.

“ MY DEAR WILKIE.”

“ I am requested by Lieut. Torckler to state that, he solemnly avows that in the affair with Lieutenant Goldney alluded to by yourself and three other Officers of the Corps, conveyed thro' Ensign Beecher, as an objection to his acting as my friend, in the field Lieut. Torckler solemnly avows that, however indiscreetly and unadvisedly he may have acted in it, he was not influenced by any motives of timidity, as he is willing to prove by giving Lieutenant Goldney, yourself, and the other Officers instant, instant, satisfaction, and unless they consent to this, he will post you all four as Cowards and Blackguards throughout the whole Army.”

No date
Received on the Evening
19th July, 1829.

}

(Signed)

Your's Sincerely,
J. WILCOX.

16. Lieutenant Wilcox was immediately required to apologize for writing, and being the bearer of the above : He did so amply, also declaring that he disapproved of the whole transaction, and that the above production was written contrary to his advice.

17. Lieutenant Torckler, being still in arrest, and it being presumed that he must inevitably be tried for previous misconduct, no charge or notice was taken of him at this time.

18. I had heard it rumour'd *vaguely* (whether from native or other sources I cannot say) on my first arriving in June, at Sultaupoor, that Lieutenant Torckler was in the habit of wearing a native dress, and was connected with some fellows in the neighbourhood. *N. B.* This report was revived immediately after the occurrences of the 9th August among natives, and *tho' enquired into*, it appeared unfounded.

19. Upon receipt of the violent letter sent thro' Lient. Wilcox this rumour occurred to me, and I for some-nights after slept with a loaded pistol under my head.

20. After a few days the impression wore off, and the pistol lay unheeded under my pillow : It was in fact left there at the request of my girl, as having iron work about it, to keep off evil spirits.

21. On the 8th August, Lieutenant Torckler was, in obedience to General Orders, released from arrest and directed to join the 48th Regiment at Allahabad, as a punishment for misconduct in calumniating his Commanding Officer and others in the Regiment. I am informed that he addressed the Commanding Officer that day to the effect that his character had been assailed by the Officers of the Corps, concerned in the opinion given on the 19th July ; to this letter an answer was, I understand, returned recommending him to forward all future correspondence through the Commanding Officer of the 48th Regiment being now attached to that Corps.

22. On the 9th August he entered my quarters as detailed in my affidavit and depositions taken on that day.

23. My motive for taking up my pistol was to deter Lieutenant Torckler from persisting to enter my bed room and Zenana (my girl was within three weeks of her confinement) as from the wild and haggard expression of his countenance, I did conceive that he meditated some violence, of what nature I of course could not guess.

24. Besides I would allow no man to forcibly enter my private apartments ; particularly under my circumstances connected unfortunately, with a female companion.

25. I did not know at the moment, that Mr. Torckler had any weapons or fire arms about him.

26. It has been reported, I understand, that Lieutenant Torckler means to alledge that what took place was on the footing of a duel. I declare that I never had any idea of the kind, and would have refused it had he proposed it to me.

27. I believe that, Lieutenant Wilcox was instigated in refusing to accommodate matters with me; on an amicable footing, by Lieutenant Torekler's advice, with the view of his (Lieut. Torekler's) taking advantage of what might occur as a means to gratify his malice against me.

28. Upon being put in arrest, Lieutenant Torekler said to Captain Caley "I am driven to desperation."

29. He has declared to Lieut. Wilson that he cared not for his own appointment, could he but injure Major Holbrow. He has in a public appeal against the Major alluded to me as a "more favoured individual" previous to my rejoining in June last.

I think it due to myself to state that, in the following instances, which I have reason to suppose Mr. Torekler will adduce as causes of irritation, viz. the taking off his compound-gates and a remark in the Mess Newspaper at Loodianah, I was in no ways concerned, being actually absent on command during the whole period when these things happened.

It was still during my absence that the correspondence took place which led to his being removed from his appointment, and ultimately from the Regiment.

I attribute his malice against me to the consciousness on his part of having committed himself in May, 1828, of having violated the promises of future good conduct implied, and made to me, and others, in October following; and finally, to a rancorous feeling against me as his successor in his appointment, exasperated by the opinion of the respectable part of the Regiment, expressed relative to the former occurrences of May, 1828, condemning his conduct upon that occasion, in which condemnation, I have the strongest reason to believe, that even his Brother in law, Lieut. Wilcox concurred.

I shall take occasion to commit to paper any other memoranda which may occur to me, and endeavour to be less diffuse and prolix.

To LIEUT. PALMER, }
D. J. A. G. }

Your's Sincerely,
PHILLIP GOLDNEY.

P. S.---I need scarcely remind you that, if possible, I would prefer the circumstance of my having a native girl under my protection not being made public, as I am aware it is not a creditable thing to any man: if you however judge it necessary, pray use your own discretion.

P. GOLDNEY.

*Compared with the Original, Deputy Judge Advocate General's Office,
Cawnpore, the 5th January, 1830.*

W. PALMER.*
Deputy Judge Advocate General

* Not knowing the use, which is to be made of the foregoing authenticated copy of a private letter to me, I deem it necessary to remark that it was found among other papers connected with the trial of Lieutenant Torekler, by him in my Office, and perused without my knowledge and concurrence---I have, however, no objection to attest its authenticity.

W. PALMER,
Deputy Judge Advocate General.

P. S. From the language of the foregoing remark any reader might be led to infer, that Lieutenant Palmer intended to accuse me of procuring this document (which he chooses to denominate "private") in a surreptitious manner; I

beg therefore to add, what he ought to have had the candor to do himself, that I found it among the Correspondence connected with my trial, which Lieutenant Palmer himself pointed out to me lying on a side Table in his Office, as to save him the trouble, I had consented to arrange it for the press. In searching for several loose and deficient portions of the Correspondence, I found the Table covered with various papers, intermingled with my own though totally unconnected with them, but these a single glance was sufficient to make me lay aside instantly, and I thus accidentally discovered this letter from Lieutenant Goldney to the Deputy Judge Advocate General: as I did not know, whether or not, it had been purposely placed there by himself, and was intended to form part of the Correspondence, though I had no recollection of ever seeing it before, or of hearing it read in Court; yet containing, as I perceived it did, matter in many respects favourable to me that had seemingly been suppressed, and totally at variance with the assertions of the Deputy Judge Advocate General in his addresses to the Court, when my life was at stake, I considered myself justified in retaining a Copy of it for the purpose of consulting my confidential adviser, Captain McNaghten, who, as well as Lieutenant Palmer, was then engaged in Court on Ensign Mayhew's trial. On being apprized of the circumstance, and after consenting with ut hesitation to attest a copy of the letter, the Deputy Judge Advocate General thought fit to add the foregoing observation of his own. If he felt conscious of having throughout acted justly by me, he need not have cared what public use I might make of the document; but if he reflected how much he alleged, and how comparatively little it authorized him to allege, against me, it is no wonder he is uneasy at its having met my eye.

CAWNPORE;

5TH JANUARY, 1830.

W. Y. TORCKLER, *Lieut.*

4th Regiment Native Infantry.

No. 5.

Cawnpore, 8th February, 1830.

Sir,

I have the honor to forward to you with a request that you will do me the favor to lay it, for transmission, before the Major-General Commanding the Division, a letter to Lieutenant-Colonel Bryant, Judge Advocate General of the Army, and two documents connected therewith.

The contents of the letter will explain to the Major General the necessity I am under of adopting this step in regard to one of his Division Staff; and I trust he will perceive that my character, if not my life, imperatively requires the reference to be made.

The proof, or disproof of my accusation consists in the record of the Proceedings alluded to, and which have already been transmitted by Lieut. Palmer to the Head of his Department; so that I cannot be charged with making a private, or an *ex parte* Statement; nor of being actuated by any but a natural desire to have my good name freed from a most cruel, false, and shocking imputation.

Trusting the Major General will pardon the trouble I am thus compelled to give him,

To, CAPT. MACRIMLAY,
Assist. Adjt. General,
CAWNPORE DIVISION.

I have &c.
W. Y. TORCKLER *Lieut.*
4th Regt. N. I.

SERVICE.

Campore ; 12th February, 1880.

No. 6.

SIR,

1. Since the transmission of my complaint against Lieutenant Palmer, Deputy Judge Advocate General, through the channel of the Head Quarters of this Division, I have had an opportunity of comparing the transcript of his "*Reply*" as forwarded with the Proceedings to your address, with that which he actually delivered to the Court ; and, among *several* variations, more or less important to me, and consisting of omissions, additions, and alterations, all made after the Trial had concluded, I observed the following substitution of one whole sentence for another, which is of too much moment to admit of my abstaining from laying it before you.

2. If I do not do so, the references in my letter will appear, in so much, unsupported by the record ; and I shall be thereby made obnoxious to a charge of a designed and malicious mis-statement. I regret that I cannot save you the trouble of a search, by a reference to the Page of the Reply* before you, in which the fault occurs ; but I shall direct you to it as well as I can by quoting the whole paragraph, and then pointing out the alleged variation. *Extract* "The Bearer and Khidmutgar have sworn that Lieutenant Goldney had no pistol in his hand when Lieutenant Torekler first fired. As servants of Lieutenant Goldney, their evidence is to be very cautiously sifted ; but it is not by oral evidence alone that this charge will be supported, or negatived, but by circumstantial proof. After the first fire, what was the conduct of the two parties? who retreated, and in what direction? They both recoiled after the first fire (Mr. Goldney to his bed room, and by his own plan, Mr. Torekler to a better position than his first fire---Is this so or not? Look to that plan, and decide, whether after the first shot of Mr. Torekler and removal from spot No. 2 to No. 3 whether he could not, as the Law requires in a case of homicide in self-defence, have rushed out of the door he had entered, and which was open and close to him, instead of entering more *into the centre of the room, away from the door he entered at, and more opposite to the door into which Mr. Goldney was rushing.*")

3. The whole of the parenthetical remark, beginning with "Mr. Goldney" and ending with the word "rushing," is omitted in your transcript ; and the following sentence recorded in its room. *Extract* "But the Court will decide whether Lieutenant Torekler could not, as the law requires in a case of homicide in self-defence he should have done, have rushed *out* at the door he had entered, and which was open and close to him, instead of remaining there ;" so that as the altered sentence now stands, it describes me as having "recoiled," and therefore necessarily, by the only meaning of the word recoil, gone so much *nearer* the door of my entrance (for *vide* Plan No. 2 and my first position at spot No. 2) and in a few lines after, it represents me as having kept stationary---as "remaining *there*" ; and in the next quotation (see para. 5 *infra*) I am once more portrayed as having moved *from* the entrance, and into the room. While I express my belief that this is not either a just or a perspicuous Summing up ; I cannot help remarking that, in no instance does the deviation from accuracy contain an error that is favorable to me, as would probably have been the case, had it all been accidental.

* *Vide* the Reply, Page, 203, and the note of reference beneath.

4. The original sentence, *delivered to the Court*, having been, as is manifest, in direct contrariety to the evidence, and calculated to have most seriously injured my cause, I am authorized to conclude that, Lieutenant Palmer did not like to venture on submitting it to *your* scrutiny, although it escaped the detection of the Court; and accordingly, having left its impression *there*, he substituted a more plausible, but not a much more accurate, Summary in its place, for eventual submission to the Commander in Chief:

5. There is no doubt whatever that, the first extract was the one he read to the Court, because I not only heard it, and attempted to check him at the moment of its delivery, but I subsequently saw it in his own hand writing: Besides which, he has (providentially for me) forgotten to alter a paragraph, almost immediately following, which corresponds with the old; but is inconsistent with the new insertion. The paragraph is as follows, just after the reference to 1 Hawk c. 298. 13.*

“It will be for the Court, as Judges both of the Law and of the fact, to say whether Lieutenant Torckler was reduced to the *inevitable necessity here alluded to for the preservation of his life*, and whether instead of firing the second shot (for these remarks apply most closely to the second fire) he could not have escaped from the room by the door at which he entered, remembering all the time, that to have this second shot, he retired *further from the door* (of his entrance) more into the room, and Lieutenant Goldney, during these his movements, was trying to screen himself.”

Here the words “to have this second shot he retired further from the door (of his entrance) more into the room” evidently correspond with the original assertion, in parenthesis, and contain like it, and in furtherance of it, a plain misrepresentation, whether the same be a designed one or not; and they do *not* correspond with the substituted one, because *it* represents me as “remaining there,” that is, at spot No. 2. in the 2nd Plan, though even that is not in conformity with the evidence.

6. The second, or amended, extract, I observed in the copy of the Reply transmitted to you, which I requested him to show me for purposes of comparison, and on returning which, I stated to him that there were several deviations from the actual Reply;---but he offered me no satisfactory explanation.

7. What discretionary power a Deputy Judge Advocate may possess of altering the original minutes of a trial which he conducts, before he transmits the Proceedings officially to you, I am unable to determine; but thinking that it can hardly extend to so marked an instance as the above, and being anxious to vindicate the truth of my former letter, I respectfully inform you of the simple fact.

In conclusion, I have only to beg of you to inform His Excellency the Right Hon'ble the Commander in Chief that should any thing be denied, which I have in this matter asserted, I shall be prepared to prove its correctness by oral testimony, wherever the record itself may be considered insufficient.

To LIEUT.-COL. BRYANT,
Judge Advocate General,
HEAD-QUARTERS.

I have, &c.,
W. Y. TORCKLER, Lieut.
4th Regiment Nati. e Infantry

SERVICE.

(No. 7.)

Cawnpore; 12th February, 1830.

SIR,

I feel it necessary once more to solicit Major General Sir S. Whittingham Kt. K. C. B. &c., to transmit the accompanying to the Judge Advocate General, should its perusal induce him to consider it proper to do so; with reference to the one which has just preceded it, but which had been dispatched to you *before* I discovered what I have now detailed.

To CAPTAIN MACKINLAY,
Assistant Adjutant General,
CAWNPORE.

}

I have, &c.,
W. Y. TORCKLER, *Lieut.*
4th Regiment Native Infantry.

No. 105.

No. 8. Assistant, Adjutant, General's, Office; Cawnpore, 12th February, 1830.

SIR,

I have the honor, by direction of Major General Sir S. Whittingham, Commanding the Division, to return to you the accompanying document* received with your letter of 8th Instant, as the Major General does not consider himself warranted in forwarding it. The remaining papers received from you, have been sent to Lieutenant Palmer, Deputy Judge Advocate General, for perusal, and will be forwarded to the Judge Advocate General, as soon as received back.

To

LIEUT. TORCKLER,
4th Regiment N. I.

}

I have, &c.,
J. H. MACKINLAY,
Assistant Adjutant General.

No. 110.

(No. 9.) Assistant Adjutant General's Office; Cawnpore, 13th Feb. 1830.

SIR,

I have the honor, by direction of Major General Sir Samford Whittingham, Commanding the Division, to request that you will furnish to me, with as little delay as possible, copies of your letters to the address of the Judge Advocate General, of date 30th Ultimo and 12th Instant, received with your letters to me of 8th and 12th Instant. You were informed in my letter of yesterday that these letters had been sent to Lieutenant Palmer, Deputy Judge Advocate General, for perusal previous to their transmission. Lieutenant Palmer brought them back, but stated at the the same time, that he had not been able to peruse them with attention, and as it was necessary for the attainment of your object, that they should be sent off without delay, they have been dispatched this day, and the copies are required for communication to Lieutenant Palmer.

To

LIEUTENANT TORCKLER,
4th Regiment N. I.
&c. &c. &c.

}

I have, &c.,
J. H. MACKINLAY,
Assistant Adjutant General.

* The Rejoinder which had been rejected by the General Court Martial.

SERVICE.

(No. 10.)

Cawnpore; 14th February, 1830.

SIR,

With reference to letters yesterday transmitted to you by Major General Sir Samford Whittingham kt. k. c. b., I have the honor, to forward the "Rejoinder" therein mentioned, as the Major General informed me he did not think himself authorized to send you a document rejected by the Court Martial; as he had no controul over, nor knowledge of the Court's Proceedings. He does not, however, object to my forwarding it direct, as it is mentioned in my representation of my case, and is, indeed, necessary to be before the Right Hon'ble the Commander in Chief for the completion of His Excellency's information on the subject.

To.

LIEUT. COL. BRYANT,
or, Judge Advocate General,
Head-Quarters, CALCUTTA.

I have, &c.,

W. Y. TORCKLER, Lieut.

4th Regiment Native Infantry.

No. 11.

Cawnpore, 17th February, 1830.

SIR,

Agreeably to the directions of Major General Sir Samford Whittingham Kt. K. C. B. and K. C. H. contained in your letter of the 18th Instant, I have now the honor to forward you correct copies of my letters to Colonel Bryant. I could not furnish them sooner, as I have had to copy them myself; but I was as diligent in preparing them as my circumstances allowed of. I take this opportunity to state that I forwarded direct the "Rejoinder" to Lieutenant-Colonel Bryant; under the impression that I was not acting with disrespect to the Major General in so doing.

Should the Deputy Judge Advocate General determine to make any communication to Head-Quarters on the matter now at issue, I trust the Major General Commanding will kindly cause me in like manner to be furnished with copies thereof.

To CAPTAIN MACKINLAY,
Assist. Adj. Genl.
CAWNPORE.

I have, &c.

W. Y. TORCKLER, Lieut.

4th Regt. N. I.

No. 157.

No. 12. Assistant Adjutant General's Office, Cawnpore, 23rd February, 1830.

SIR,

I have the honor, by direction of Major General Sir Samford Whittingham, Commanding the Division, to transmit to you, in compliance with the request in your letter of 17th Instant, a copy of a letter addressed to the Judge Advocate General by Lieutenant Palmer, Deputy Judge Advocate General, under date 23d Instant, received yesterday from Lieutenant Palmer.

LIEUT. TORCKLER,
4th Regiment, N. I.
Cawnpore.

I have &c.

J. H. MACKINLAY,
Ast. Adj. General.

No. 13. *Deputy Judge Advocate Genl's Office, Cawnpore, 30th February. 1830.*

SIR,

Since the dispatch of my letter of the 12th Instant to your address, I have heard with astonishment that Lieutenant Torckler, of the 4th Regiment Native Infantry, and now under sentence of a General Court Martial, has forwarded to you, through the Major General Commanding the Division, a complaint against me in my official character of Deputy Judge Advocate General.

The complaint was transmitted to me yesterday evening by order of Sir Samford Whittingham accompanied by some correspondence, and a letter from the Assistant Adjutant General of the Division, directing me to return the whole after perusal; in order that it might be dispatched by the Hawk of that day.

It being late in the afternoon, and my time being occupied in preparing for the trial on the 16th, of Lieutenant Burslem, for which between 30 and 40 Witnesses have been or are to be summoned, I immediately waited on the Major General, and stated the impracticability of my perusing the papers he had ordered to be sent to me, and that I therefore begged permission to return it to the Assistant Adjutant General without perusal.---With the precise nature of the complaint exhibited against me, I am not acquainted, but understanding that it principally rests on some alterations asserted to have been made in the fair Copy of my Reply to the Defence made for him by Captain McNaghten, differing from the address as delivered by me in Court, I handed into the Major General the original, and only rough copy, thereof which I ever had, or have, and at my solicitation I believe the Major General has transmitted it to your address.

I have, therefore, for the present only to express a hope, that His Excellency The Commander in Chief will be pleased to direct the fullest investigation into all, or any part of, my Public conduct connected with this Trial---as there is nothing I have to conceal, and nothing to fear. The Prisoner, as I shall prove by the Station at large, has had every facility, which a free welcome to my house, Table, Office, books &c. could afford: his friend, Captain McNaghten, who has been on a visit to me since from July last till the end of January, had access to every paper in my office, for our mutual corrections, (and, as you will see, his hand writing occurs in the fair Copy of the evidence forwarded to you,) and that Lieutenant Torckler might be satisfied with the record as it went, I agreed to transmit his own copy of the evidence,---corrected by both Captain McNaghten, and myself---his Brother's Copy of the Defence,---I sent the whole Proceedings to him on the day of their dispatch and it was by him and Captain McNaghten that they were weighed and made into parcels.---I sent freely and willingly, as often as was required, my rough Copy of the Reply, for them all to read and compare with the fair copy, the material part of which is in my writer's handwriting,---and I challenge the most open investigation into the integrity, honesty, fairness, and candour of my manner to Lieutenant Torckler, and Captain McNaghten, whose presence at this Station of late has been most vexatious, and harassing to me, in nearly all the public acts of my Life.

I repose in confidence, on the decision and orders of His Excellency the Earl of Dalhousie, and am fully prepared at any moment, to repel any accusations which the unprovoked, and incessant, enmity and hostility of Captain McNaghten toward me, may induce him to recommend other individuals to prefer, or to abide by the result of an appeal to a General Court Martial on him, for any malicious and unfounded complaint against me, which he may himself prefer, or instigate others to advance.

To LIEUT. COL. BRYANT.
Judge Advocate Genl.
Calcutta. }

I have &c.

W. PALMER,
Dy. Judge Advocate Genl.

No 14.

It having been generally, but most erroneously, reported, that an apology has been made by Capt. McNaghten to Lieut. Palmer; the following papers are put forth by the former Officer to refute the calumny.

“Cawnpore, February, 14th, 1830.

“Lieut. Palmer having requested me to state, whether I believe he conducted the Prosecution against Lieut. Torckler with an evil intent; and having at the same time, unqualifiedly declared to me through Lieut. Christie, that he had no influencing motive whatever in the course of that trial, but such as naturally and justly belongs to his public situation; I declare, on my part, that I believe in that assertion. As Counsel for Lieut. Torckler I drew up for him, at his own desire, a public letter of complaint against Lieut. Palmer, for a false Summing up of the evidence in that case; but I feel bound to credit Lieut. Palmer's declaration that, as he was not actuated by unworthy feelings, the mis-representations charged could not have been wilful; nor was my assistance to Lieut. Torckler in the least malicious against Lieut. Palmer. I acted as he did, from public motives, in a public capacity.”

(Signed)

R. A. McNAGHTEN.

“Captain McNaghten having thus expressed a belief, which the Rules of Society warranted his doing, in such assertions of motive as Lieut. Palmer made; and gladly and cordially disclaimed the influence of unworthy motives over himself; he considered it necessary that Lieut. Palmer should apologize to him for the gratuitous imputation of any such motives; and accordingly he drew up the following paper to which Lieut. Christie procured the signature of his principal Lieut. Palmer, and there the matter would have terminated, excepting for the above alluded to most unfounded reports. No other apology, on any other account, or at any other time, has ever passed between Captain McNaghten and Lieut. Palmer.

“Cawnpore, February, 15th, 1830.”

“Lieut. Palmer apologizes to Capt. McNaghten, for having imputed to him any unworthy motives in the performance of a Public Duty, as Counsel for Lieut. W. Y. Torckler; which imputation was conveyed in a desire, on Lieut.

"Palmer's part, that Capt. McNaghten should formally disavow them: He gives credit to Captain McNaghten's assurance that the latter was not actuated by any unbecoming feelings in the aid he gave Lieut. Torekler, either during the trial, or in the transmission of the formal complaint made, since its termination, against Lieut. Palmer, for his conduct as Deputy Judge Advocate General, on that occasion; and does not believe that it was at Captain McNaghten's instigation that Lieut. Torekler transmitted that complaint."

(Signed)

"W. PALMER"

"Deputy Judge Advocate General"

N. B. Eight days after the above was signed, I learned with a mingled feeling of astonishment and contempt, that Lieut. Palmer had, on the 13th Feb'y two days before this apology was signed, actually written the annexed Public Letter to Colonel Bryant, for submission to the Commander in Chief, accusing me of the very points he so soon after expressed his disbelief in! He never informed me that he had done this, but quietly contradicted himself; and has now by his disingenuousness warranted my retraction of the expression of credit I placed in his assurance, at a period when he had purposely kept me in ignorance of what he had done. I think it a matter of course, that Lieut. Christie could not have been told by Lieut. Palmer, that the affair he was employed to get privately settled, had been thus placed in the hands of the Commander in Chief *twenty four* hours earlier. My Public notice of Lieut. Palmer's letter is also attached hereto.

(No. 15.)

(Signed)

R. A. McNAGHTEN.

Sir,

Cawnpore, February, 24th, 1830.

In a letter from Lt. Palmer, Deputy Judge Advocate General, to your address, dated the 13th Inst. and an official Copy of which I obtained a perusal of late last night, (that being the first time, I had seen or heard of it) I observe my name introduced both strangely and unwarrantably, in the two principle Paragraphs. These Paragraphs are the 4th and 5th.

Regarding the former of them, I shall only observe that it abounds in the suppression of facts which ought to have been stated, and that scarcely any part of it contains the real truth. The portions however which relate to the transcription &c. of Lieutenant Torekler's trial having been probably long ere this enquired into; I shall merely observe that as Lt. Palmer offers no *denial* of the charges preferred by the Prisoner against him, but deviates to other points, and garbles the account of the actual circumstances, I may be contented to wait till I am called upon for the required explanation of my own part of the transaction.* As to his curious allusions to the Dinners he supplied Lt. Torekler and me, as it seems very much out of place in a Defence of himself against the gravest of accusations; I shall not imitate his example by dwelling on the subject, or stating (though he has forgotten to do so) what portion of the expence I bore; unless I am informed that the right Hon'ble The Commander-in-Chief considers it essential to ascertain the particulars. His declaration that my sojourn here has been

* It is necessary for me to explain here, that I was fully prepared to disprove the absurd and ridiculous allegations in Lieutenant Palmer's letter, (No. 13.) and to expose generally the art and duplicity which pervades the whole composition, whenever the expected investigation into his conduct should take place; and for which reason, I abstained at this time from noticing his letter in any way.

frught with vexation to his Public Life, I can in no way reply to, except by stating that it fell to *my* lot to assist Lt. McGrath, Ensign Richardson, Lieutenant Ram-ay, Lt. Torekler, and Ensign Mayhew, on their respective Trials, at each of which he was the Deputy Judge Advocate General; and that it fell to *his* lot to have each set of proceedings more or less disapproved of by the Highest Authority—save in the case of Lt. Torekler, to which I have not yet information enough to speak. But as I have no means of influencing *that* authority, and never did more than in an honest and open manner, enable the Prisoners to detect the Official errors of the Public Prosecutor, I am at a loss to know, how Lt. Palmer can say that I have been the means of harrassing every Public act of his Life. If he feels conscious of possessing the requisite ability and integrity for his Staff situation, he will not continue to assert that any individual could, as far as it is concerned effect his official deterioration.

Private enmity it is easy to impute; but as I think my own word is, morally speaking, of more value than Lt. Palmer's (since his Summing up in the case of Mr. Torekler) I shall not do more at present than simply contradict him.

The last of his Paragraphs, being also the termination of his Letter I find it necessary to transcribe at length:—"I repose in confidence, on the decision and orders of His Excellency the Earl of Dalhousie, and am fully prepared at any moment, to repel any accusations which the unprovoked, and incessant, enmity and hostility of Captain McNaghten toward me, may induce him to recommend other individuals to prefer, or to abide by the result of an appeal to a General Court Martial on him, for any malicious and unfounded complaint against me, which he may himself prefer, or instigate others to advance."

There is no discernible magnanimity in Lieutenant Palmer's offering to stand the result of a Court Martial upon me; but as he has chosen to accuse me to the Commander in Chief of enmity, litigation, and other things of the sort, on the 13th instant I humbly submit that the following detail of what he did on the 15th, will form a sufficient commentary for the present, on his former representation.

"Campore, 15th February, 1830"

"Lieutenant Palmer apologizes to Captain McNaghten, for having imputed to him any unworthy motives in the performance of a Public Duty, as Counsel for Lt. W. Y. Torekler: which imputation was conveyed in a desire, on Lieutenant Palmer's part, that Captain McNaghten should formally disavow them. He gives credit to Captain McNaghten's assurance that the latter was not actuated by any unbearing feelings in the aid he gave Lieut. Torekler, either during the Trial, or in the transmission of the formal complaint made since its termination, against Lieut. Palmer for his conduct as Deputy Judge Advocate General, on that occasion; and does not believe that it was at Captain McNaghten's instigation that Lieutenant Torekler transmitted that complaint."

"W. PALMER."

Deputy Judge Advocate Genl.

The assurance on my part referred to in the above, I gave to Lieutenant Palmer---though it is obvious he had no right to call upon me for it, as I had acted strictly in a public capacity---solely to avoid giving him private umbrage, or appearing personally hostile ; but for his having presumed to suspect me of unworthy motives, I thought it fitting that he should sign the foregoing ample, and unconditional apology (wholly dictated by myself) or else to adopt an alternative which it may not be quite proper to specify here.

He deliberately made his election to sign the apology :--so that he appears now in the novel light of one who makes a public complaint to the Commander-in-Chief on a subject on which, in twenty four hours after, he undertakes to redress himself privately ; and ends in eight and forty hours from the time of his original appeal, and demand of a Court Martial, by *apologising* to the person he ventured to accuse ; and *in ipso facto*, pronouncing his public Letter, *quoad hoc*, a libel and a falsehood.

In conclusion, I shall only express my hope, that the " integrity, honest ty, fairness, and candour of his manner towards me" of which Lieutenant Palmer has elaborately boasted, may have had sufficient influence over him to have suggested the necessity of his forthwith informing you of that complete retraction, of such parts of his public letter as refer to me, which is manifestly involved in the above given apology, and expression of his *disbelief* in all which he had formally accused me of, but two days before ; because, as he chose to take the affair so abruptly out of the hands of the Commander in Chief, after having advisedly placed it in them, it would seem but " fair and candid" towards me, at least, if not also towards His Excellency, to give instant information of his altered sentiments to the Earl of Dalhousie.

To LIEUT. COL BRYANT.
Judge Advocate General,
Calcutta. }

I have &c,
R. A. McNAGHTEN,
Captain, 61st Regt. N. I.

N. B. No notice whatever has been taken of my foregoing three letters (Nos. 1. 2. and 6.) to the address of the Judge Advocate General of the Army, that I am aware of---not even so much as an acknowledgment of their receipt has been communicated to me !

As no investigation has been directed to be made into the several charges exhibited in them against the Deputy, and since Lieutenant Palmer has been permitted to continue in the discharge of his official duties, without any disapprobation of his conduct with regard to them, having been publicly made known, it is natural to infer that they have been deemed of little, or no importance ;---groundless they are certainly not, as the Record can abundantly prove.

In all my misfortunes, I have felt nothing more acutely than, that such an appeal, on a matter wherein my Life and Reputation both were at stake, should have been thus disregarded. I do not mention this as a subject of complaint against the High Authority to whom my appeal was made ; as the circumstances have perhaps been weighed, and a reply deemed unnecessary ; and if so, it would be both presumptuous and disrespectful in me to offer any comments thereon. I therefore merely state the simple fact, and submit with patience, in the hope, that ere many months elapse, my

innocence will be made manifest, and that they, whose lot it has now been to consign me to an ignominious fate, will then confess a change in their sentiments, and aid in expunging the foul stain that has been cast upon my character.

Precedents are not wanting to prove that, a Court Martial is not an infallible criterion of Justice and there are several instances of its decision having been reversed, when the case has been submitted to the judgment of a superior Tribunal. the Members of which must be admitted, from the nature of their Profession, to be more competent and experienced Judges. Relying on conscious Innocence, and the integrity of my motives, if not, on the numerous illegalities and wrongs I have been made the victim of, in the course of the late Proceedings against me, I trust it will not appear too arrogant or sanguine in me, that I do cherish the hope of a like favorable issue to all my sufferings and grievances.

12th April, 1830.

W. Y. TORCKLER.

SERVICE.

(No. 16.)

Cawnpore ; 4th October, 1829.

SIR,

Having a deposition to make to you, as a Justice of the Peace, regarding a felony, and being at present in an arrest, which does not admit of my leaving my Bungalow, I am necessitated, though I very reluctantly do it, to request you will take the trouble of coming to my Bungalow, at such time to-morrow, or Tuesday, as may be most convenient to yourself (only before sun-set) for the purpose of receiving my charge of the felony in due form, upon oath.

To J. WEMYSS Esq. }
Justice of the Peace,
&c. &c., CAWNPORE. }

I have, &c.,
W. Y. TORCKLER, Lieut.
4th Regiment Native Infantry.

N. B. On the receipt of Mr. Wemyss' reply (No. 17.) a similar requisition to the above was addressed to Mr. Irwin, only as *Magistrate*, and not *Justice of the Peace*, which was accordingly complied with : after which No. 18. was received by me, and consequently, it became advisable to address the Secretary in the Judicial department vide No. 19. W. Y. T.

(No. 17.) TO LIEUT. W. Y. TORCKLER ; 4th Regiment Native Infantry.

CAWNPORE.

SIR,

I have to acknowledge the receipt of your letter of yesterday's date, and in reply to inform you, that I am not authorized by Government to take cognizance of Criminal cases.--I would recommend your laying your case before the Major General, Commanding the Division, in conformity to the Mutiny Act of George 4th. Chapter 81. and Section 3d. &c.

CAWNPORE ; }
5th October 1829. }

I have, &c &c ,
J. WEMYSS.
Justice of Peace.

To *Lieutenant W. F. TORRELLER,*
4th Regiment Native Infantry.

CAWNPORE.

18) *Sir,*

When I attended you at your quarters, agreeably to the request contained in your letter of the 4th instant, and received the deposition therein alluded to, I intimated to you that I did not consider the case to be one of which I could take cognizance, and that I would address you officially to that effect, and state the grounds which led me to form that opinion.

2d As the deposition however, distinctly referred to the cause of your being placed under arrest, I deemed it requisite in the first instance to obtain from the General, Commanding the Division, copies of the Charge against you, and of the order of his Excellency the Commander in Chief for a Court Martial to assemble to try you ; these I received yesterday, the delay in their receipt has been caused by the native holidays of the Dussera, and this will account to you for my not having forwarded this letter sooner.

3rd. I now beg to state the grounds upon which, I do not consider the case detailed in your deposition to be within my jurisdiction, and which prevent my taking any steps in it, and they are as follow.

1st. Because the act of which you complain is declared by you to have been committed by Lieutenant Goldney, in the kingdom of Oude, a foreign territory, and in a military cantonment.

2d. Because it appears from the charge against you, that you have been placed in arrest charged with having committed the very same act against Lieut. Goldney, which you now ascribe to him, and it is evident that the Charge in question, and your deposition both relate to one and the same occurrence, the merits of which are about to be tried by a Court Martial duly assembled for the purpose.

3rd. Because the deposition made by you seems to me to be a counter-charge merely, and if Lieut. Goldney was the aggressor, and not yourself, you ought, I think, to make it the subject of your defence before the Court Martial, where you will undoubtedly obtain justice, instead of attempting, by a deposition before me, to take the case out of the jurisdiction to which it properly belongs, and where alone, in my opinion, it can be tried, for it is quite evident that if I were to act upon the deposition made by you, the course of the trial would be impeded ; and with reference to the latter part of your statement, if any irregularity took place on the part of the Officer, Commanding at Sultaupore Oude, in your arrest, it forms a subject for the decision of the Court Martial.

4th. As however the case is one of an unusual description, I shall submit your deposition, and the correspondence between us, for the information and Orders of the Right Honorable the Governor General in Council.

I have &c.

Sillah Cawnpore,
10th October, 1829.

}
 }

J. A. IRWIN:
Magistrate,

SERVICE:

To
 No. 19. *H. Shakespear, Esqr. or Secretary to Government,*
Judicial Department. Fort William.

SIR,

Being most unfortunately situated and unable to obtain the co-operation of the Magistrate, in apprehending a person, accused by me of a felony, and for which felony, I am at the same time closely imprisoned, on the illegally administered oath of the actual criminal; and so imprisoned without having been heard, as by the law, I ought to have been, at the same time as my accuser, I am compelled to refer the case for the decision of the Right Honorable the Governor General in Council, through what I believe to be the proper channel of the Judicial Secretary.

The accompanying is, a true copy of an Affidavit, duly made by me before J. Irwin Esqr, Judge and Magistrate of this district, but who has refused to act upon it, for reasons given in a letter to my address of the 10th Inst. and which, as he himself has proposed to forward it, I shall not do more than extract from here.

His first reason for not acting is, that the occurrence deposed to, is stated by me to have transpired in Oude, and in a Military Cantonment; but I deferentially submit that every Magistrate, on hearing of a felony, and the residence of the felon, is bound to take all practicable measures, to have him apprehended by the particular authority in whose jurisdiction he may be. In this case, the accused is residing in this Cantonment, and the course laid down is, for the Magistrate (after satisfying himself of the sufficiency of the accusation) to issue a warrant for his seizure, which warrant the Commanding Officer is bound to back; and a Magistrate, in any County in England, may issue his warrant for the apprehension of a felon, charged with having perpetrated a felony in Ireland. It is no matter where it was committed, for though the *venue* may affect the jurisdiction of the Tribunal before which it may be tried, it cannot affect the duty of a Magistrate when he is informed of the transaction, and is aware of the place where the criminal resides.

By the 4th of Geo. IV. Chap. 81. Section XVII, it appears clear, that so long as the accused person has not been tried, and no measure been adopted for his trial before a General Court Martial, agreeably to Section Second of the above act, the civil Magistrate is bound to endeavor to apprehend him, and the Commanding Officer equally bound to deliver him over to the Civil Arm.

With regard to Lieutenant Golduey, no such trial, and no such measure, as are provided for by the first quoted Section, have been adopted, and I therefore submit, that by the plain meaning of the words of that Section, the Magistrate should have acted as it authorizes him to do.

His second reason is, that I have been placed in arrest, charged with having committed the very same act that I charge upon another, and am to be tried by a Court Martial for the same---With reference to the detail of the unlawful manner in which I was first imprisoned, which his Lordship in Council will gather from the Affidavit, I submit that, a Magistrate is not the less bound to act upon such a deposition as I made before Mr. Irwin, because I had no previous op-

portunity allowed me of speaking for myself, and was imprisoned, unheard, on the oath of a man who merely got the start of me in complaining of an act which he himself had committed ; but that, on the contrary, it was then his still more bounden duty to compass the apprehension of the real offender, so that I might come on my trial with that circumstance in my favor ; for my accuser, who has such a manifest interest in getting me condemned, in order to his own consequent escape, will be the principal witness on the trial against me.

The only point for the Magistrate to consider is, *not* whether the person deposing to him, is himself to be tried, but whether the deposition itself, and any other enquiries he may choose to institute, afford reasonable grounds for the seizure of the accused ; for if the law were otherwise, a deep offender might frequently escape, by being the first to go to a Magistrate, and swear his own offence against the party aggressed.

Mr. Irwin's third reason is, that my Affidavit seems to make a counter-charge, and that if Lieut. Goldney be the real aggressor, I had better make that the subject of my defence. Without stopping to argue that, the Magistrate has no right to *suppose* in the manner he here does. I shall only observe that, when A accuses B, of a crime which A. himself committed ; and B. on making his own deposition is told, that it is merely a counter-charge, for no other reason than that A was the first accuser, there will not only be impediments thence in the way of justice, but the innocent will often have to suffer for the guilty : especially in parts which are out of the speedy operation of the act of Habeas Corpus. Again, Mr. Irwin does not seem aware that I cannot make my defence before a Court Martial upon oath, and that therefore I should lose that advantage by postponing my charge ; but the main question is, whether with reference to the 17th section of the Mutiny Act 4th Geo. IV. Chap. 81. and all the authorities on the subject of a Magistrate's duties, on being informed of a felony, Mr. Irwin should not have at once proceeded to act upon my affidavit, and given me all the benefit which the law allows me, the same as a Magistrate would have done in England. The conduct of the Officer, who unlawfully imprisoned me at Sultaupore, will I believe, be eventually investigated before the Supreme Court, and not, as Mr. Irwin assumes, before the Court Martial that may sit upon myself.

Cairnpoor

11th October, 1829.

I have &c.

W. Y. TORCKLER, Lt. 4th Regt. N. I.

P. S. I beg permission to add here, that Mr. Wemyss, the Collector of Cawnpoor, and who is also a Justice of the Peace, declares that he has not authority to act ; and refers me among other things, to the 3d Section. M. A. 4th Geo. IV. Chap. 81. which Section, His Lordship in Council cannot fail to perceive, particularly authorizes the apprehension of any criminal offender, in the proper manner, by a Magistrate, with the same *proviso*, as in the 17th Section ; and it directs him to deliver over all such persons to the Military authorities ; thus plainly indicating the right of the Civil power to take, or assist to take every offender, regularly accused of a capital offence, by instructing him how to act after the seizure has been effected.

W. Y. TORCKLER,

Lt. 4th Regt.

Bengal Native Infantry.

SERVICE.

No. 20.

Cawnpore, 6th October, 1829.

SIR,

I do myself the honor herewith to transmit, for presentation to Major General Sir S. Whittingham, K. C. B. Commanding the Division, and to be acted upon by him accordingly, as he may be pleased to consider best, a duplicate deposition regularly made by me this day before J. Irwin, Esq. the Magistrate of this District, (who has himself the original) from which the Major General will learn the true circumstances on account of which I am now closely imprisoned, while the real criminal, as I certify upon oath, is allowed to be at large.

If the Major General should consider, (supposing the truth of the accompanying affidavit) that I was in the first instance illegally imprisoned, in consequence of an illegally administered oath, and examinations taken in my absence, I humbly hope, he will represent the unusual hardship of the case accordingly, but I beg to be distinctly understood as not in the least degree objecting to a military arrest, nor wishing to avoid a trial which, on the contrary, I am unfeignedly anxious to undergo, but that my desire is to represent, what, I think, the illegality of Major Holbrow having acted as a *Magistrate*, and in that self-constituted capacity, administered unlawfully an oath, and imprisoned me on the result of that oath, to undergo a trial for my life, in a case which he avowed to be a civil one, and of which he took cognizance originally in a civil character. Upon a deposition, which I am advised is not legally worth any thing, and upon unsworn declarations of native witnesses, recorded, as I believe, without the aid of a regular Interpreter, I have been made a close Prisoner for an alleged civil offence, without having been allowed any previous hearing, or been furnished with information of what was recorded against me; and the person, whose oath charged me with the felony, was actually the person who himself committed it.

2. Agreeably to the XVII Section of the Honorable Company's Mutiny Act now in force, I am informed that it is clear the Civil Magistrate should have acted on my deposition, Lieutenant Goldney not being at present within the proviso of that Section; but Mr. Irwin declines to do more than receive my affidavit, and I am therefore compelled to trouble the Major General, and respectfully to leave to his consideration the further measures necessary to be taken in regard to the person whom I have accused, upon oath, of an attempt to take my life, or to do me a great bodily injury, in a manner which the law considers to be felonious.

To

CAPT. MACKINLAY.
Depy. Asst. Adj. Genl. }

I have &c.

W. Y. TORCKLER,
Lieut. 4th Regt. N. I.

No. 718.

No. 21, Deputy Assistant Adj. General's Office, Cawnpore, 9th Nov. 1829.

SIR,

I have the honor, by direction of Major General Sir S. Whittingham,

Commanding the Division. to subjoin for your information, a copy of a letter from the Deputy Adjutant General of the Army, of 31st Ultimo, No. 2028.

To. }
LIEUT. TORCKLER,
4th Regt. N I.

I have &c.
J. MACKINLAY,
Dy. Adj. General.

No. 228.

No. 22. Adjutant General's Office, Presidency of Fort William, 31st October, 1829.

SIR,

I have the honor to acknowledge the receipt of your letter of the 14th with its enclosure from Lieutenant Torckler, of the 4th N. I. and in reply, I am directed by the Commander in Chief to inform you, that as that Officer is about to be tried by a General Court Martial, His Excellency deems it inexpedient to pass any decision on the circumstances stated by him, which it is presumed will be adverted to in his Defence, and consequently be investigated by a competent Tribunal.

To }
Major Genl. Sir S Whittingham,
Comm'dg. Cawnpore Division.

I have, &c.,
Signed W. S BEATSON.
Dy. Adj. Genl. of the Army.

To, LIEUTENANT. W. Y TORCKLER

No (23.)

4th Regiment Native Infantry,
CAWNPORE.

SIR,

Herewith I beg to transmit Copy of a letter from the Secretary to Government, in the Judicial Department, under date the 27th Ultimo, for your information.

Zillah Cawnpore,
Magistrate's Office,
9th November, 1829.

I have &c.
J. A. IRWIN,
Magistrate.

(No. 2930.)

To J. A. IRWIN ESQUIRE,

Judicial Department.

Magistrate of the Zillah of Cawnpore.

(No. 24.)

SIR,

I am directed to acknowledge the receipt of your letter, dated the 12th Instant, and to acquaint you in reply that under the circumstances therein stated, the Governor General in Council entirely approves your having declined to act upon Lieutenant W. Y. Torckler's Affidavit.

2. Lieutenant Torckler having himself made a reference to Government on the same subject, you are desired to inform him of the above decision.

COUNCIL CHAMBER,
the 27th October, 1829.

I have, &c.,
H. SHAKESPEAR,
Secretary to Government.

No 25.

To

The Honorable Sir Charles Grey, Kt. Chief Justice, The Hon'ble Sir John Franks, Kt. and the Hon'ble Sir Edward Ryan, Kt. Puisne Justices of the Supreme Court of Judicature, Calcutta.

The humble and respectful Memorial of William Young Torckler, a Lieutenant in the 4th Regiment, Bengal Native Infantry :

Humbly and respectfully sheweth.

That, on the 9th day of August last, your Memorialist having been in the house of Philip Goldney, in the Station of Sultanpore, in the Kingdom of Oude, a Lieutenant in the Regiment aforesaid, for the purpose of procuring the signature of the said Philip Goldney to a declaration, not of a degrading nature to the said Philip Goldney, but calculated to cleanse the reputation of your Memorialist from certain stigmas which had been cast upon it by the said Philip Goldney, was assaulted by the said Philip Goldney in form and manner herein-after mentioned: to wit, by the said Philip Goldney having gone into his bedroom, and having taken a pistol, loaded with powder, and one leaden bullet, from under his pillow, returned to the room, where he had left your Memorialist standing, and did then and there, feloniously, wilfully, maliciously, and unlawfully, and with malice aforethought, level and present the said pistol at your Memorialist, and did by drawing its trigger, attempt to discharge the said pistol, then and there held in his right hand, at your Memorialist, with intent then and there, and in manner aforesaid, to kill and murder your Memorialist; and the said Philip Goldney did then and there, and in manner aforesaid, make two more separate endeavours to discharge the said pistol, with the said intent; and that, when the said Philip Goldney made the first attempt as above described on the life of your Memorialist, he, that is to say the said Philip Goldney, had not received any assault, nor any threat from your Memorialist, nor even knew that, your Memorialist had any adequate means of resisting the violence thus offered, or of averting the danger which thus threatened his existence.

And this humble and respectful Memorial further humbly, respectfully, and truly sheweth, that, on beholding the aforesaid felonious and malicious attack; your Memorialist drew, with some difficulty, owing to the confusion which arose in his mind from so unexpected an assault, and from his not having anticipated so sudden an emergency, a pistol from where it had accidentally become entangled in the lower part of his trousers, and did in his just and proper self-defence, but without any intent to murder, discharge the said pistol in such a direction as was calculated to make it intimidate, but not maim or kill, the said Philip Goldney; and your Memorialist, on the second and third attempts to discharge the first named pistol, by the said Philip Goldney, did discharge a second pistol, in manner aforesaid and in his own proper defence, but without doing any personal injury to the said Philip Goldney.

And your Memorialist further sheweth, that he did not discharge the first of his own pistols, nor even draw forth, nor exhibit the same, nor make use of any threat of violence to, nor assault, the said Philip Goldney, until the said

Philip Goldney in the manner, and with the intent aforesaid, had deliberately attempted by drawing his trigger, to discharge his pistol at your Memorialist ; nor, further, until your Memorialist had retreated several paces from the said Philip Goldney, the said distance having been as great as, from the nature of the room, and the imminence of the danger, your Memorialist could have safely retreated, without offering resistance.

And this humble and respectful Memorial further humbly, and respectfully sheweth, that after the third attempt to discharge the first mentioned loaded pistol, the said Philip Goldney rushed forward, and seized your Memorialist, and succeeded in throwing your Memorialist down, (with what intent your Memorialist cannot positively say, but he believes with an evil and a wicked intent) and that your Memorialist was extricated by several persons, being servants, sepoys, and others, from his perilous situation. That upon this interruption, of whatever were his designs, the said Philip Goldney departed speedily from his house, and proceeded to that of Major John Holbrow, the Commanding Officer of the Station aforesaid ; and falsely and maliciously informed the said Major John Holbrow, that your Memorialist had made a felonious attempt on the life of the said Philip Goldney, the reverse having been the truth. That, the said Major John Holbrow did thereupon constitute himself a Magistrate, which your Memorialist believes he had no lawful right to do, and having administered an oath to the said Philip Goldney, took down in writing the deposition of the said Philip Goldney, and the unsworn statements of two of the servants of the said Philip Goldney. That, from a long series of hostile conduct on the part of the said Major John Holbrow to your Memorialist, and your Memorialist is prepared to prove, that in the above Magisterial conduct, as well as in the proceedings about to be detailed, the said Major John Holbrow was actuated by feelings of great malevolence towards your Memorialist, and went contrary to the course of law in order to injure your Memorialist's cause, and cast suspicion on his actual innocence. That your Memorialist, without having been permitted to be present during the aforesaid Magisterial process, without being informed of the statements made against him, without having been allowed to say aught in his Defence, and without having been duly informed of the Charge alleged against him, was suddenly apprehended, and placed in close imprisonment, under a large guard of Sepoys with fixed bayonets, and under the command of a European Officer, by direction of the said Major John Holbrow, while the said Philip Goldney was left entirely at large, notwithstanding the assurance of your Memorialist, in presence of Captain Caley, and Lieutenant Salter, the Station Staff, that the said Philip Goldney had in truth made the felonious assault against the life of your Memorialist.

That, from the 9th day of August aforesaid, to the 6th day of October ensuing, your Memorialist was detained in the above-named close and rigorous imprisonment, without having had any opportunity given to him of going before a Magistrate, or a Commanding Officer, or a Justice of the Peace. That, in progress of time, an order was issued by the Right Hon'ble the Commander in Chief for the trial of your Memorialist before a General Court Martial at this Station of Cawnpore, upon a charge of felony, but which charge had not been communicated to your Memorialist till upwards of one month after his imprisonment.

That, on his arrival here, still under the aforesaid rigorous restraint, your Memorialist lost no time in applying to J. Irwin, Esq. Magistrate of the District, to take an affidavit of the above detailed transactions ; but that, the Magistrate declined to adopt any measures whatever for the apprehension of the said Philip Goldney, who was then going at large in the Station of Cawnpore. That your Memorialist made application to J. Weinyss, Esq. a Justice of the Peace, and that, the said J. Weinyss, Esq. likewise refused to take any steps in the required apprehension. That, the result of applications to the Right Hon'ble the Commander in Chief, and the Right Hon'ble the Governor General in Council, was the non-apprehension of the said Phillip Goldney ; and that, your Memorialist has now no resource but in this humble & respectful memorial to you, the Honorable Justices of his Majesty's Supreme Court of Judicature, for the purpose of procuring the apprehension, and the due bringing to trial, of the said Philip Goldney, for his wilful, unlawful, malicious, and felonious attempt on the life of your Memorialist, and for obtaining lawful satisfaction for the great injury done to your Memorialist, by the illegal conduct of the said Major John Holbrow, who moreover on the 10th of August aforesaid, unlawfully put in close imprisonment Juggernaut, a Pundit belonging to the said 4th Regiment, and did there detain him till the 19th day of the following October, and did not release the said Pundit, upon that day, until he, the Pundit, had given two sureties for his appearance when called upon.

No charge whatever was made against the said Pundit ; he had not committed any manner of offence ; the Military Authority of a Commanding Officer does not sanction the arbitrary confinement of any one under his command for more than eight days ; the Pundit was kept in such strict imprisonment that he could not be shaved, nor have performed the enjoined ceremonials of his religion ; no reason has ever yet been assigned for the aforesaid incarceration ; and your Memorialist firmly believes, and can bring strong presumptive evidence to prove, that the said Pundit was imprisoned as aforesaid, by the said Major John Holbrow, because he, the Pundit, was thought to be friendly to the interests of your Memorialist.*

That, the laws of the country have thus been violated both in the person of your Memorialist, a British subject, and in that of a high caste Hindoo, living under the protection of the British Government ; for that, the said Major John Holbrow had no lawful authority to act, as he did, in the first case, in a civil capacity ; and in the next, in so arbitrary a manner, contrary not only to the known and established laws of the land, but to the Mutiny Act, 4. Geo. IV. c. 81. and the " customs of war."

That, your Memorialist is not by any means capable of arguing his hard and unfortunate case, as it ought to be argued ; nor possessed of pecuniary means to employ learned Counsel to conduct it before your Lordships upon his behalf ; and that, he therefore throws himself entirely on your Lordships' sense of justice

* A Persian Memorial to this effect was forwarded by the Pundit to the Judges of the Supreme Court, at the same time with this, but without eliciting any reply, or notice that has yet been made apparent.

in this great emergency. That, he is not desirous of avoiding his own Trial, nor the strictest scrutiny, while he calls for justice on those who have wronged him, by humbly and respectfully memorializing your Lordships to know, whether a felony can be committed, and yet a Justice of the Peace refuse to aid and assist in apprehending the perpetrator ; whether a Commanding Officer can constitute himself a Magistrate, and arbitrarily imprison a European, or a Native, beyond the period fixed by the Rules and practices of Martial Law ; and whether a duly accused felon is to remain at large, doing his utmost to screen himself from justice, by procuring the conviction of him whose life he had foully and wantonly endangered, and against whom he will appear as a principal witness.

That, what shall appear to be right, may be ordered by your Lordships to be done in the premises, is hereby earnestly implored, and your Memorialist will, as in duty bound, ever gratefully pray.

CAWNPORE. }
12th November, 1829. §

W. Y. TORCKLER, Lieut.
4th Regt. Bengal N. I.

N. B. A duplicate Copy of my Affidavit accompanied the foregoing Memorial to the Judges of the Supreme Court of Judicature, of Calcutta ; but Five Months have now expired without my obtaining any manner of redress, or being honoured with even so much as an acknowledgment of the receipt of my appeal to their interposition and protection.

12th April, 1830.

W. Y. T.

F I N I S.

